

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/1. INTRODUCTION/1. Railways, inland waterways and cross-country pipelines.

RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (

1. INTRODUCTION

1. Railways, inland waterways and cross-country pipelines.

This title sets out provisions relating to the law of railways¹, inland waterways² and cross-country pipelines³. The thematic link between these three subjects⁴ is largely historical in origin⁵.

The part of the title that deals with the law relating to railways excludes any detailed consideration of either tramways⁶ or systems occupying an intermediate position between railways and tramways (such as light railways and guided transport systems, including trolley vehicle systems)⁷. Tramways and other systems thus excluded from the title are dealt with elsewhere in the work⁸, as are the provisions which relate specifically to the railway network in London⁹.

The treatment of inland waterways in this title focuses on the law which establishes the navigation authorities¹⁰ and which provides for certain aspects of the inland waterways system to be regulated and managed¹¹. Other aspects of the law which, in a wider contemplation of the subject, might be considered applicable (such as the rights associated with navigable inland waters) are dealt with elsewhere in the work¹².

The law relating to cross-country pipelines as it is set out in this title deals only with the Pipelines Act 1962¹³ and is to be distinguished from the law relating to other onshore pipelines not covered by the 1962 Act¹⁴ and from offshore (or 'submarine') pipelines¹⁵.

1 See PARA 3 et seq post.

2 See PARA 435 et seq post.

3 See PARA 554 et seq post.

4 Ie apart from their shared concern with what may be characterised as inland networks, albeit of very different natures.

5 There existed a very basic similarity between the provisions applied in each context to authorise the construction of the different networks and to provide for associated matters (for which, historically, the private Bill procedure was used in each case): see PARAS 291 et seq, 520 et seq, 573 et seq post. While the treatment of cross-country pipelines in this title maintains its focus on construction and works, the modern law relating to railways and to inland waterways is notable for the prominence now given to supervisory and regulatory matters. However, these last two bodies of law (relating to railways on the one hand and to inland waterways on the other) exist in very different contexts and there is actually very little commonality between them in the modern law, except that the Transport and Works Act 1992 provides a system for authorising works whose framework is applied to railways and to inland waterways alike: see PARAS 302 et seq, 522 et seq post. Transport by rail and by inland waterway is treated simultaneously in EU law (on the same terms as transport by road) albeit that the inland waterway provisions have very limited application to the network in Great Britain due to its geographical isolation from the rest of the network in the EU: see PARA 2 post.

6 Before the passing of the Tramways Act 1870 (repealed in part), no distinction was drawn in legal terms between tramways and railways, but Acts passed thereafter do not, as a rule, apply to both railways and tramways unless this is expressly stated: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1532 et seq. See also note 8 infra.

7 See, however, the discussion of health and safety provisions which govern railways, tramways, trolley vehicle systems, and any transport system using any other mode of guided transport, at para 194 et seq post. As to light railway etc legislation generally see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1574 et seq.

8 See ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1532 et seq. Note, however, that the Health and Safety functions of the Office of Rail Regulation (ORR) include 'railway safety purposes' which apply to a railway, a tramway, a trolley vehicle system or a transport system using any other mode of guided transport other than a guided bus system (see PARA 196 post) and that the Rail Accident Investigation Branch (RAIB) has power to investigate both railway and tramway accidents, although with discretion reserved for the Chief Inspector of Rail Accidents to give way to the police on the latter (see PARA 277 post). The safety of cableway installations designed to carry persons is also discussed in this title: see PARA 260 post.

9 As to the railway network in London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 256 et seq.

10 It is primarily the British Waterways Board, the Environment Agency and the Broads Authority: see PARA 440 et seq post. As to a detailed exposition of the functions of the Environment Agency see further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 17, 191 et seq. As to the Broads Authority see further WATER AND WATERWAYS vol 101 (2009) PARA 734.

11 See PARA 505 et seq post. The authorisation of construction and works is also covered in some detail (see note 5 supra).

12 As to the rights of navigation etc over inland waterways see WATER AND WATERWAYS vol 101 (2009) PARA 688 et seq. As to general maritime matters such as construction standards or the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 625; and as to the carriage of freight by inland waterways see CARRIAGE AND CARRIERS vol 7 (2008) PARA 104.

13 The main purposes of the Pipe-lines Act 1962 are to control, in the public interest, the construction of cross-country and local pipelines (as defined by the Act) and to provide for the acquisition of land (or of associated rights) without resort to the private Bill procedure: see PARA 554 post. The provisions of the Pipe-lines Act 1962 which sought to regulate, in the interests of health and safety, the construction, operation and maintenance of pipelines have now been repealed and replaced by the Pipeline Safety Regulations 1996, SI 1996/825: see PARA 609 et seq post.

14 As to the various exclusions from the scope of the Pipe-lines Act 1962 which apply see PARAS 560-566 post. See also FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 841 et seq (gas: works, pipelines and rights over land); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1281 et seq (electricity: works and rights over land).

15 See the Petroleum Act 1998 Pt III (ss 14-28); and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1740 et seq.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/1. INTRODUCTION/2. European law governing transport by rail and inland waterway.

2. European law governing transport by rail and inland waterway.

The EC Treaty¹ contains provisions which govern transport by rail and inland waterway² and requires, in all matters so governed, that the objectives of the EC Treaty must be pursued by Member States within the framework of a common transport policy³. For these purposes, and taking into account the distinctive features of transport, the Council must⁴ lay down: (1) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States⁵; (2) the conditions under which non-resident carriers may operate transport services within a Member State⁶; (3) measures to improve transport safety⁷; and (4) any other appropriate provisions⁸.

Aids are compatible with the EC Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service⁹.

Any measures taken within the framework of the EC Treaty in respect of transport rates and conditions must take account of the economic circumstances of carriers¹⁰. However, in the case of transport within the Community, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question must be abolished¹¹.

The imposition by a Member State, in respect of transport operations carried out within the Community, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries is prohibited, unless authorised by the Commission¹².

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates must not exceed a reasonable level after taking the costs actually incurred thereby into account¹³; and Member States must endeavour to reduce these costs progressively¹⁴.

An Advisory Committee consisting of experts designated by the governments of Member States must be attached to the Commission; and the Commission, whenever it considers it desirable, must consult the Committee on transport matters without prejudice to the powers of the Economic and Social Committee¹⁵.

1 le the Treaty Establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

2 See the provisions of the EC Treaty Pt 3 Title V (arts 70-80) (arts 70-80 formerly arts 74-84; renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1): see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ); and see the text and notes 3-15 infra. The provisions of the EC Treaty Pt 3 Title V apply to transport by road as well as by rail and inland waterway (see art 80(1) (as so renumbered)); and the Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport (see art 80(2) (as so renumbered)). The application of art 78 (as renumbered) is limited to Germany. The provisions relating to inland waterways have a limited application to Great Britain given the geographical isolation of its network from that which exists in the rest of the European Union.

3 Ibid art 70 (as renumbered: see note 2 supra).

4 le by acting in accordance with the procedure referred to in *ibid* art 251 (as renumbered) (ie the procedure which applies where such a reference is made for the adoption of an act) and after consulting the Economic and Social Committee and the Committee of the Regions: art 71(1) (as renumbered: see note 2 *supra*). By way of derogation from the procedure provided for in art 71(1) (as renumbered), where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they must be laid down by the Council acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee: art 71(2) (as so renumbered). In so doing, the Council must take into account the need for adaptation to the economic development which results from establishing the common market: art 71(2) (as so renumbered). Until the provisions referred to in art 71(1) (as renumbered) have been laid down, no Member State may, without the unanimous approval of the Council, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State: art 72 (as so renumbered).

5 *Ibid* art 71(1)(a) (as renumbered: see note 2 *supra*).

6 *Ibid* art 71(1)(b) (as renumbered: see note 2 *supra*).

7 *Ibid* art 71(1)(c) (as renumbered: see note 2 *supra*).

8 *Ibid* art 71(1)(d) (as renumbered: see note 2 *supra*).

9 *Ibid* art 73 (as renumbered: see note 2 *supra*).

10 *Ibid* art 74 (as renumbered: see note 2 *supra*).

11 *Ibid* art 75(1) (as renumbered: see note 2 *supra*). The Council must, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee, lay down rules for implementing the provisions of art 75(1) (as renumbered): art 75(3) (as so renumbered). The Council may in particular lay down the provisions needed to enable the institutions of the Community to secure compliance with the rule laid down in art 75(1) (as renumbered) and to ensure that users benefit from it to the full: art 75(3) (as so renumbered). The Commission must, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within art 75(1) (as renumbered) and, after consulting any Member State concerned, must take the necessary decisions within the framework of the rules laid down in accordance with the provisions of art 75(3) (as renumbered): art 75(4) (as so renumbered). The provision contained in art 75(1) (as renumbered) does not prevent the Council from adopting other measures pursuant to art 71(1) (as renumbered) (see the text and notes 4-8 *supra*): art 75(2) (as so renumbered).

12 *Ibid* art 76(1) (as renumbered: see note 2 *supra*). The Commission must, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in art 76(1) (as renumbered), taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other: art 76(2) (as so renumbered). After consulting each Member State concerned, the Commission must take the necessary decisions: art 76(2) (as so renumbered). The prohibition provided for in art 76(1) (as renumbered) does not apply to tariffs fixed to meet competition: art 76(3) (as so renumbered).

13 *Ibid* art 77 1st para (as renumbered: see note 2 *supra*). The Commission may make recommendations to Member States for the application of art 77 (as renumbered): art 77 3rd para (as so renumbered).

14 *Ibid* art 77 2nd para (as renumbered: see note 2 *supra*). As to the application of art 77 (as renumbered) see note 13 *supra*.

15 *Ibid* art 79 (as renumbered: see note 2 *supra*).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(i) Historical Context/A. CHANGES TO THE STRUCTURE OF THE RAILWAY INDUSTRY/3. Grouping.

2. RAILWAYS

(1) IN GENERAL

(i) Historical Context

A. CHANGES TO THE STRUCTURE OF THE RAILWAY INDUSTRY

3. Grouping.

As the railway system of Great Britain grew and developed, railway companies continually amalgamated and regrouped as a result of the commercial pressures that were at large¹. A reorganisation of the national railway system was effected for the first time by public legislation in the form of the Railways Act 1921, which provided for the numerous existing railway companies to be formed into four main groups by way of statutory amalgamation and absorption schemes².

¹ The many amalgamations of railway companies and the absorption of the less successful by the more successful were effected by powers obtained through private Acts, which are outside the scope of this work.

² The groups referred to in the text were: (1) the Southern Group (which became the Southern Railway Co Ltd); (2) the North Western, Midland and West Scottish Group (which became the London Midland and Scottish Railway Co Ltd); (3) the North Eastern, Eastern and East Scottish Group (which became the London and North Eastern Railway Co Ltd); and (4) the Western Group (the existing Great Western Railway Co Ltd): see the Railways Act 1921 s 1, Sch 1 (repealed). The groups set out under heads (1) to (3) supra were an amalgamation of a number of existing companies, absorbing also the smaller or subsidiary companies in each group. The remaining group, under head (4) supra, comprised the Great Western Railway Company, which alone retained its original identity, but absorbed some other smaller companies in the process.

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4. Nationalisation.

During the 1939-1945 war, control of railways was assumed by the Minister of War Transport whose functions then devolved on the Secretary of State for Transport¹. With effect from 1 January 1948, the Transport Act 1947, as part of its general scheme to nationalise transport, provided for the undertaking of the four principal railway companies², of the London Passenger Transport Board³ and of certain other railway and light railway undertakings⁴ to be vested, inter alia, in the British Transport Commission⁵.

With effect from 1 January 1963, the Transport Act 1962 reorganised the nationalised transport undertakings carried on by the British Transport Commission and, to this end, established four new boards as public authorities, together with a holding company, among whom the functions and the property of the British Transport Commission were divided⁶. All the property, rights and liabilities of the Commission were transferred to and vested in the boards and the holding company⁷. The British Railways Board, one of the four new boards, was vested with the property, rights and liabilities⁸ comprised in the part of the Commission's undertaking which constituted the Commission's railway system⁹, except for the London system, which passed to another new board, the London Transport Board¹⁰.

1 As to the Secretary of State see PARA 35 post.

2 As to the four main companies which emerged after grouping see PARA 3 note 2 ante.

3 The London Passenger Transport Act 1933 s 1 (repealed) had established the London Passenger Transport Board which for the first time embodied London public transport as a separate and unified administrative entity: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269.

4 As to which see the Transport Act 1947 s 12, Sch 3 (repealed).

5 See *ibid* ss 12-14, Sch 3 Pt I (repealed). The British Transport Commission was established under s 1 (repealed) with the general duty under s 3 (repealed) to provide an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain.

6 The British Railways Board, the London Transport Board, the British Transport Docks Board and the British Waterways Board, together with the Transport Holding Company, were established as successors to the Commission: see the Transport Act 1962 ss 1, 29 (both as originally enacted). As to the division of the Commission's undertaking see ss 31-42, Schs 2-6 (as originally enacted). The British Transport Commission was dissolved on 1 January 1964: see s 80 (repealed). As to compensation to officers and servants of the Commission see s 81 (as amended). As to the British Waterways Board see PARA 447 et seq post. As to the subsequent history of the Transport Holding Company see note 7 *infra*; and as to the subsequent history of the London Transport Board see note 10 *infra*. As to the subsequent history of the British Transport Docks Board see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 620.

7 See the Transport Act 1962 Pt II (ss 31-42) (as originally enacted).

On 1 January 1969, certain assets of the Transport Holding Company were transferred to and vested in the National Freight Corporation: see the Transport Act 1968 s 4(1) (repealed); s 159(1) (definition now repealed); Sch 3 (repealed); Sch 4 (as amended); and the Transport Act 1968 (Commencement No 1) Order 1968, SI 1968/1822, art 2, Sch 2. This order was made under the Transport Act 1968 s 166(2). The Transport Holding Company was dissolved on 31 March 1973: see s 53 (as amended); the Transport Holding Company Act 1972 s 1(3); and the Transport Holding Company (Dissolution) Order 1973, SI 1973/338.

The Transport Act 1978 provided for the interest held by the National Freight Corporation in Freightliners Ltd, a subsidiary owned jointly with the British Railways Board and established in 1968 to provide for the carriage of containers by rail, to be transferred to and vested in the Board: see s 15 (as amended).

The National Freight Corporation was dissolved on 1 October 1980 and its undertaking was then transferred to the National Freight Company Limited: see the Transport Act 1980 s 45 (as amended); and the National Freight Corporation (Transfer of Undertaking) Order 1980, SI 1980/1380.

8 'Liability' includes an obligation: Transport Act 1962 s 92(1).

9 As to the distribution of the Commission's assets see *ibid* s 31 (spent). The British Railways Board acquired the Commission's railway system, the shipping services provided by the Commission, certain harbours, the road passenger services provided by the Commission, the British Transport Commission Police Force, and the Commission's Historical Records Department: see s 31 (spent). The Transport Act 1981 made provision for the Board to have power to dispose of its subsidiary activities and for these powers to be exercised also under direction by the Secretary of State in a specified manner and in relation to a specified subsidiary: see ss 1, 3(1) (a) (repealed). Under these provisions, the board's interests in hovercraft, shipping services, hotels, outdoor advertising, station catering and certain workshops were disposed of. A new harbours company was formed under s 2 (repealed).

10 See the Transport Act 1962 s 1 (repealed); and see note 6 *supra*. The London Transport Board was abolished upon the establishment of the London Transport Executive under the Transport (London) Act 1969: see s 4 (repealed); s 16 (repealed with savings); s 39 (repealed). The London Transport Executive continued in existence under the name of London Regional Transport (see the London Regional Transport Act 1984 ss 1, 4 (repealed)) but London Regional Transport was abolished under the Greater London Authority Act 1999 (see s 302). Provision was made for the transfer in stages of London Regional Transport's functions, property, rights and liabilities to a new body known as Transport for London (see s 297). As to the establishment of Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 269-270. As to transport in London generally see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 265 et seq.

UPDATE

4 Nationalisation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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5. Privatisation.

In July 1992, a White Paper was issued, entitled 'New opportunities for the railways: the privatisation of British Rail'¹, which proposed the privatisation of the British Railways Board's freight and parcel operations, the franchising of its passenger operations, a right of access to the rail network for private operators of freight and passenger services, and the setting up and eventual privatisation of a track authority². These proposals were passed into law in the form of the Railways Act 1993, which provided for the appointment and functions of two new statutory officers, the Rail Regulator³ and the Director of Passenger Rail Franchising⁴, and made provision relating to the licensing of operators of railway assets⁵, the control of the consumption of the capacity of networks, stations and light maintenance depots⁶, the franchising of passenger services⁷, a complete revision of the railway closure procedure⁸, the restructuring and disposal of the board's activities⁹, a new safety¹⁰ and security¹¹ regime, and other provisions needed to adapt a nationalised industry regime to a private sector operation¹².

While the commercial framework of the industry has been retained, statutes enacted since 1993 have introduced various refinements to the privatised system and made some structural changes, most notably by abolishing the British Railways Board, the Rail Regulator and the Director of Passenger Rail Franchising¹³. Some responsibility for the overall direction of the railway industry has been returned to the Secretary of State (and to the devolved authorities) and the Office of Rail Regulation has been established, which has primacy in relation to safety and regulatory matters¹⁴.

1 *Ie New opportunities for the railways: the privatisation of British Rail* (Cm 2012) (1992).

2 See *ibid*. As to the establishment and subsequent history of the British Railways Board see PARAS 4 ante, 44 post.

As to whether the business of running a railway is intrinsically an activity of government see *Cameron v Network Rail Infrastructure Ltd* [2006] EWHC 1133 (QB), [2007] 3 All ER 241, [2007] 1 WLR 163 (defendant was not, and had not been acting as, a public authority for the purposes of the Human Rights Act 1998 s 6).

3 As to the Regulator see the Railways Act 1993 s 1 (repealed); and PARA 47 post.

4 As to the Franchising Director see *ibid* s 1 (repealed); and PARA 45 post.

5 See *ibid* ss 6-16 (as originally enacted); and see PARA 83 et seq post.

6 See *ibid* ss 17-22 (as originally enacted); and see PARA 102 et seq post.

7 See *ibid* ss 23-31 (as originally enacted); and see PARA 130 et seq post.

8 See *ibid* ss 37-50 (mostly repealed). See now the Railways Act 2005 Pt 4 (ss 22-45); and PARA 145 et seq post.

9 See the Railways Act 1993 Pt II (ss 84-116) (mostly prospectively repealed); and PARA 44 post.

10 See *ibid* s 117; and see PARA 194 post.

11 See *ibid* ss 118-121 (as amended); and see PARAS 285-289 post.

12 See in particular *ibid* s 122 (statutory authority as a defence to actions in nuisance etc: see PARA 427 post); s 125 (repealed) (see now the Railway Heritage Act 1996; and PARAS 74-81 post); the Railways Act 1993 s 129 (repealed) (byelaws) (see now the Railways Act 2005 s 46, Sch 9; and PARA 18 post); the Railways Act 1993

s 130 (as amended) (penalty fares: see PARA 396 post); s 134(1), Sch 11 (pensions) (as amended) (see PARA 6 post); s 135 (as amended) (concessionary travel for railway staff etc: see PARA 137 post).

13 Significant structural changes to the privatised system have been effected by the Transport Act 2000, the Railways and Transport Safety Act 2003 and the Railways Act 2005: see further the text and note 14 infra. The Railways Act 2005 has further provided for the public sector funding of railways (see Pt 2 (ss 6-17); and PARA 39 et seq post) and has replaced the regime which provides for modifications to be made to the network etc (see Pt 4, Schs 7, 8; and PARA 145 et seq post).

14 The Transport Act 2000 abolished both the British Railways Board and the office of the Director of Passenger Rail Franchising and established the Strategic Rail Authority; provision was made for the transfer to the Authority of the functions, rights and liabilities of the Franchising Director and for the residual functions, rights and liabilities of the British Railways Board to be shared between the Authority and the Secretary of State: see Pt IV Ch I (ss 201-222) (mostly repealed), ss 240-241, Schs 14-18, 25 (Schs 14-15 repealed; Schs 16-18, 25 as amended); and PARA 46 post.

The Railways and Transport Safety Act 2003 abolished the Rail Regulator, established the Office of Rail Regulation and provided for all of the functions, property, rights and liabilities of the Rail Regulator to be transferred to the Office of Rail Regulation: see Pt 2 (ss 15-17), Schs 1-3 (Schs 2-3 as amended); and PARA 47 post. The Rail Accident Investigation Branch (RAIB) was also established under the Railways and Transport Safety Act 2003 (see Pt 1 (ss 1-14); and PARA 273 et seq post); Pt 3 (ss 18-71, Sch 4) put the British Transport Police Force on to a statutory footing (see PARA 281 et seq post), which mirrors the provision made in relation to police forces and authorities in police areas under the Police Act 1996 Pts I-III (ss 1-64) (as to which see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq).

The Railways Act 2005 provided for the winding up of the Strategic Rail Authority and for the transfer of its financial and strategic functions to the Secretary of State and to the Welsh Ministers, and for the transfer of the Authority's consumer protection functions to the Office of Rail Regulation, along with certain functions previously conferred on the Health and Safety Commission by or under the Health and Safety at Work etc Act 1974; some of the Strategic Rail Authority's functions were considered redundant and were not transferred: see Pt 1 (ss 1-5), Schs 1-4; and PARA 46 post. The regime which provided for access charges reviews (see the Railways Act 1993 s 19A, Sch 4A (as added and amended); and PARA 171 et seq post) was further amended by the Railways Act 2005 s 4, Sch 4, Sch 13 Pt 1 in order to broaden the scope of the reviews and to increase the influence of the Secretary of State and the Scottish Ministers over them, effectively limiting the Office of Rail Regulation's jurisdiction in this regard (see PARA 177 note 9 post). The Rail Passengers Committees were also abolished and the Rail Passengers Council (established under the Railways Act 1993) was reconstituted under the Railways Act 2005 Pt 3 (ss 19-21), Schs 5-6: see PARA 48 et seq post.

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B. CONTINUATION AND PROTECTION OF RAILWAY INDUSTRY PENSIONS

6. Provision for railway industry pensions.

The privatisation of the railways required a significant change to be made to the railway industry's pension arrangements: the British Rail Pension Scheme became the Railways Pension Scheme¹, an industry-wide arrangement open to all employees within the privatised railway industry².

In relation to arrangements previously made under the Transport Act 1980, the Railways Act 1993 made consequential modifications and amendments³ and applied Part III of the Transport Act 1980, which governs railway pensions, with specified modifications⁴. If it appears to the Secretary of State necessary or expedient to do so, in consequence of any provision made by order under the provisions of the Railways Act 1993 relating to pensions⁵, he may by provision made in the same manner: (1) repeal or amend, or modify the operation of, any private or local Act of Parliament⁶; or (2) revoke or amend, or modify the operation of, any statutory instrument (whether local or general)⁷. A statutory instrument containing an order under the provisions of the Railways Act 1993 relating to pensions⁸, other than an order under the provision relating to government guarantees to trustees of certain new schemes⁹, must not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament¹⁰.

Under the Transport Act 2000, the Strategic Rail Authority¹¹ had the duty to make provision for increases in certain pensions and capital sums¹² broadly corresponding to each increase in official pensions under the Pensions (Increase) Act 1971 and under the Social Security Pensions Act 1975¹³ (an 'official pensions increase')¹⁴. However, where it was the practice of the British Railways Board, when making increases broadly corresponding to an official pensions increase, in any circumstances, not to make provision for an increase¹⁵, or to make provision for an increase of a reduced amount¹⁶, the duty to make provision for increases in pensions and capital sums¹⁷ did not require the Strategic Rail Authority to make in similar circumstances provision for an increase in excess of any for which the Board would have made provision¹⁸.

Under the Railways Act 2005, the Secretary of State may by order make such modifications of any provision of: (a) Part III of the Transport Act 1980¹⁹; (b) that part of the Railways Act 1993 which relates to pensions²⁰; or (c) that part of the Transport Act 2000 which makes provision for the continued indexation of pensions²¹, as appear to him to be necessary or expedient in consequence of those provisions of the Railways Act 2005 which provide for the transfer of the Strategic Rail Authority's functions²² or of any transfer scheme made thereunder²³.

1 The transfer of eligible members, assets and liabilities from existing pensions schemes (primarily the British Rail Pension Scheme) to the Railways Pension Scheme (being a new scheme), and the winding up of certain existing schemes, was effected by virtue of the Railway Pensions (Transfer and Miscellaneous Provisions) Order 1994, SI 1994/2005 (as to which see note 2 *infra*). Initial provision was made to the effect that employees who were members of the British Rail Pension Scheme immediately before 5 November 1993 had two distinct rights: (1) the right to remain members of a shared cost section of the pension scheme; and (2) the right to build up future benefits which are no less favourable than those under the British Rail Pension Scheme as at 31 May 1994: see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, arts 2-4.

2 The main statutory provisions which regulate any new and existing railways pension schemes are contained in the Railways Act 1993 s 134(1), Sch 11 (as amended) and orders made thereunder, namely the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432 (amended by SI 1994/2005), the Railways Pension Scheme Order 1994, SI 1994/1433 (amended by SI 1994/2005), the Railway Pensions (Transfer and Miscellaneous Provisions) Order 1994, SI 1994/2005, the Railways Pensions Guarantee (Prescribed Persons) Order 1994, SI 1994/2150, the Railway Pensions (Designation, Substitution and Miscellaneous Provisions) Order 2001, SI 2001/2264; the Railways Pensions Guarantee (Prescribed Persons) Order 2007, SI 2007/1595; and the Railway Pensions (Transfer of Pension Schemes) Order 2007, SI 2007/2205: see PARA 7 et seq post. Certain transitional provisions were included in the Railways Act 1993 Sch 11 (as amended): see Sch 11 para 14. As to the establishment of new schemes see PARA 7 post; as to the amendment of existing schemes see PARA 8 post; as to the transfer of pension rights and corresponding assets and liabilities see PARA 9 post; as to the powers of protection see PARA 10 post; and as to entitlement to participate in the joint industry scheme see PARA 11 post. Certain former British Rail Pension Schemes benefit from a government guarantee: see PARA 12 post.

The repeal of the Transport Act 1962 s 74 (as amended) (power of the Secretary of State to make orders about pensions), so far as relating to the British Railways Board and its subsidiaries (within the meaning of s 74 (as amended)), is without prejudice to the continuing validity of any orders made under s 74 (as amended): Railways Act 1993 ss 134(2), (3), 151(1). For these purposes, 'subsidiary', in relation to any body corporate, means a body corporate which is a subsidiary of the first mentioned body corporate as defined by the Companies Act 1985 s 736 (as substituted; prospectively repealed) (see also COMPANIES vol 14 (2009) PARA 25); Transport Act 1962 s 92(1) (definition amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; the Companies Act 1989 s 144(4), Sch 18 para 4; and the Railways Act 1993 s 152, Sch 14). The following orders, as well as others that do not relate so directly to the railway industry, have been made under the Transport Act 1962 s 74 (as amended): the British Transport Reorganisation (Pensions of Employees) (No 1) Order 1962, SI 1962/2714; the British Transport Reorganisation (Pensions of Employees) (No 3) Order 1962, SI 1962/2758 (amended by SI 1969/1824; SI 1971/1128); the British Transport Reorganisation (Pensions of Employees) (No 4) Order 1962, SI 1962/2793 (amended by SI 2006/680); the British Transport Reorganisation (Pensions of Employees) (No 1) Order 1964, SI 1964/1329 (amended by SI 1969/1824); the British Transport (Closed Railway Pension Scheme) Order 1965, SI 1965/43; the British Railways (Alteration of Pension Schemes) Order 1967, SI 1967/929; the British Transport (Closed Railway Pension Schemes) Order 1968, SI 1968/1021; the British Transport Police (Transfers from Pension Schemes) Order 1968, SI 1968/1498; the British Transport (Pensions of Employees) (No 2) Order 1968, SI 1968/2012 (amended by SI 2006/680); the British Transport (Closed Railway Pension Scheme) Order 1969, SI 1969/1695; the British Transport (Pensions of Employees) (No 1) Order 1969, SI 1969/1824 (amended by SI 1980/1351); the British Transport (Pensions of Employees) (No 2) Order 1969, SI 1969/1825; the British Transport (Alteration of Pension Schemes) Order 1969, SI 1969/1858 (amended by SI 1988/962; SI 2001/3649); the British Transport (Southern Railway Superannuation Fund) Order 1970, SI 1970/22; the British Transport (Amalgamation of Railways' Pension Funds) (No 1) Order 1970, SI 1970/477 (amended by SI 1970/1298; SI 1973/2019); the British Transport (Amalgamation of Railways' Pension Funds) (No 2) Order 1970, SI 1970/1298 (amended by SI 1973/1390); the British Transport (Pensions of Employees) Order 1971, SI 1971/1128; the British Railways Board (Alteration of Pension Schemes) Order 1973, SI 1973/2019; the British Railways Board (Central Trust) Order 1974, SI 1974/2001; the British Railways Board (Pension Funds Investment Provisions) Order 1977, SI 1977/699; the British Railways Board (Winding up of Closed Pension Funds) Order 1978, SI 1978/1358 (amended by SI 2001/3649); and the British Transport (Pensions of Employees) Order 1980, SI 1980/1351. As to the establishment and abolition of the British Railways Board see PARA 44 post.

3 See the Railways Act 1993 Sch 11 paras 9-10 (as amended); and the Transport Act 1980 s 52(1) (as amended), ss 52A-52D (as added and amended), s 70(2) (as amended).

4 As to the application and modification of ibid Pt III (ss 52-60) (as amended) see the Railways Act 1993 Sch 11 para 10 (amended by the Transport Act 2000 ss 252, 274, Sch 27 paras 17, 49(1), (4), Sch 31 Pt IV). Expressions used in the Railways Act 1993 Sch 11 para 10 (as amended) and in the Transport Act 1980 Pt III (as amended) have the same meaning, except that, for the purposes of the Railways Act 1993 Sch 11 para 10 (as amended), 'designated scheme' means an occupational pension scheme or, as the case may be, a section of any such scheme, which is designated under Sch 11 para 10(1); 'pension scheme' includes a section of a pension scheme; and 'qualifying pension rights' means any pension rights as respects the whole or some part of which there are subsisting relevant pension obligations a proportion of which, as determined for the purposes of the Transport Act 1980 s 52(1)(a), has not been funded: see the Railways Act 1993 Sch 11 para 10(17). For the purposes of Sch 11 (as amended), 'occupational pension scheme' has the meaning given in the Pension Schemes Act 1993 s 1 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 741); and 'pension rights', in relation to any person, includes: (1) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and (2) a right of allocation in respect of the present or future payment of a pension: Railways Act 1993 Sch 11 para 1(1). 'Pension', in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition: Sch 11 para 1(1).

The Secretary of State may make a substitution order in relation to any occupational pension scheme which is a new scheme, within the meaning of Sch 11 (as amended) (see PARA 7 post), which is designated under Sch 11 para 10(1) (designation of schemes which are to be treated as BR pension schemes for certain purposes of the Transport Act 1980 Pt III (as amended)) and in relation to which a guarantee has been given by the Secretary of State under the Railways Act 1993 Sch 11 para 11 (as amended) (see PARA 12 post): see the Transport Act 1980 s 52B(1) (as added).

Designations for the purposes of ibid Pt III (as amended) have been made under the Railways Act 1993 Sch 11 para 10 (as amended) by the Railway Pensions (Transfer and Miscellaneous Provisions) Order 1994, SI 1994/2005: see art 6, Sch 5. The Railway Pensions (Designation, Substitution and Miscellaneous Provisions) Order 2001, SI 2001/2264 also has been made under the Railways Act 1993 Sch 11 para 10 (as amended), and under the Transport Act 1980 ss 52B, 52D (as added), for the purposes of terminating the Secretary of State's liability to make payments under s 52(1) (as amended) in respect of two sections of the Railways Pension Scheme (designated for that purpose by the Order: see the Railway Pensions (Designation, Substitution and Miscellaneous Provisions) Order 2001, SI 2001/2264, arts 2-3), and making provision for payments to be made in substitution for that liability. As to the Secretary of State see PARA 35 post.

5 Ie under the Railways Act 1993 Sch 11 (as amended): see Sch 11 para 12.

6 Ibid Sch 11 para 12(a).

7 Ibid Sch 11 para 12(b). As to an order which has been made under Sch 11 para 12 see the Railway Pensions (Transfer of Pension Schemes) Order 2007, SI 2007/2205, which modifies the operation of the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432 (as amended).

8 Ie under the Railways Act 1993 Sch 11 (as amended): see Sch 11 para 13(1). As to the making of orders under the Railways Act 1993 generally see PARA 35 note 12 post.

9 Ie an order under ibid Sch 11 para 11 (as amended) (see PARA 12 post): see Sch 11 para 13(1).

10 Ibid Sch 11 para 13(1). At or before the time when a draft of a statutory instrument containing an order under Sch 11 para 3 (as amended) (see PARA 8 post) or Sch 11 para 4 (as amended) (see PARA 9 post) is laid before each House of Parliament pursuant to Sch 11 para 13(1), the Secretary of State must also lay before each House of Parliament a copy of any comments on the order in question:

- 1 (1) which have been made in writing to the Secretary of State by the trustees mentioned in Sch 11 para 3(4) (as amended) (see PARA 8 post) or, as the case may be, Sch 11 para 4(5) (as amended) (see PARA 9 post) (Sch 11 para 13(2)(a));
- 2 (2) which are designated by those trustees as comments which they wish the Secretary of State to consider as comments on that order (Sch 11 para 13(2)(b)); and
- 3 (3) which have been received by the Secretary of State before the expiration of such period as has been notified by him to those trustees as being the consultation period in relation to the order in question (Sch 11 para 13(2)(c)).

Schedule 11 para 13(2) is without prejudice to the validity of the order in question: see Sch 11 para 13(2). If, apart from the provisions of Sch 11 para 13(3), the draft of an instrument containing an order under Sch 11 (as amended) would be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it must proceed in that House as if it were not such an instrument: Sch 11 para 13(3).

11 The Strategic Rail Authority has been since abolished: see PARAS 5 ante, 46 post.

12 The Transport Act 2000 s 244 applies to a pension or capital sum at any time if: (1) at that time it is a pension in payment, a deferred pension or capital sum or a pension or capital sum to which a person's future entitlement is contingent on the death of another person (s 244(2)(a)); and (2) the British Railways Board either made provision for an increase in it broadly corresponding to an official pensions increase or would have done so if it had been within head (1) supra at a time when the Board made provision for increases broadly corresponding to an official pensions increase (ss 244(2)(b), 254). For the meaning of an 'official pensions increase' see the text and notes 13-14 infra.

13 Ie under the Social Security Pensions Act 1975 s 59 (as amended). As to the general arrangements relating to the increase of public service pensions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 614 et seq.

14 Transport Act 2000 s 244(1).

15 Ibid s 244(3)(a).

16 Ibid s 244(3)(b).

17 Ie the duty under ibid s 244(1) (see the text and notes 11-14 supra).

18 Ibid s 244(3).

19 Ie the Transport Act 1980 Pt III (ss 52-60) (as amended) (railway pensions) (see note 4 supra): Railways Act 2005 s 1(8)(a).

20 Ie the Railways Act 1993 Sch 11 (as amended) (see the text and notes 2-10 supra): Railways Act 2005 s 1(8)(b).

21 Ie the Transport Act 2000 s 244 (see the text and notes 11-18 supra): Railways Act 2005 s 1(8)(c).

22 Ie under ibid s 1 (see PARA 46 post).

23 Ibid s 1(8). The power under s 1(8) to make modifications by order is subject to the affirmative resolution procedure: s 1(9). At the date at which this volume states the law, no such order had been made.

UPDATE

6 Provision for railway industry pensions

NOTE 2--In definition of 'subsidiary' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25): Transport Act 1962 s 92(1) (definition amended by SI 2009/1941).

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7. Establishment of new schemes.

The Secretary of State¹ may by order² provide for the establishment, administration and management of one or more occupational pension schemes for the provision of pensions³ and other benefits for or in respect of eligible persons⁴. Without prejudice to the generality of this provision, such an order may make provision with respect to:

- 1 (1) the persons who may participate⁵ in, or otherwise be members⁶ of, the scheme⁷;
- 2 (2) the making of contributions by persons participating in the scheme⁸;
- 3 (3) the making of contributions by employers of persons who participate in the scheme⁹;
- 4 (4) the amendment of the scheme¹⁰;
- 5 (5) the winding up of the scheme, whether in whole or in part¹¹;
- 6 (6) the persons by whom any function¹² under or relating to the scheme is to be exercisable¹³.

Any occupational pension scheme established in this way¹⁴ is to be treated for all purposes as if it were a pension scheme established under an irrevocable trust¹⁵.

1 As to the Secretary of State see PARA 35 post.

2 Any power to make an order under or by virtue of the Railways Act 1993 s 134(1), Sch 11 (as amended) in relation to an existing scheme, the joint industry scheme, a new scheme, the Transport Police scheme, or a designated scheme within the meaning of Sch 11 para 10 (as amended) (as to which see PARA 6 note 4 ante) is exercisable notwithstanding that the occupational pension scheme in question only becomes such a scheme by virtue of its establishment or designation as such in the instrument which contains the order in question; and references to such schemes must be construed accordingly: Sch 11 para 1(3). For these purposes, 'new scheme' means an occupational pension scheme established under Sch 11 para 2; and 'Transport Police scheme' means such one of the schemes for the provision of pensions for or in respect of persons with service as officers of the British Transport Police Force (whether or not pensions may also be provided under the scheme for or in respect of persons without such service) as the Secretary of State may by order designate as the Transport Police scheme for the purposes of Sch 11 (as amended): Sch 11 para 1(1). In any enactment, legislative or other instrument or document, a reference (whether or not as the 'British Transport Police Force') to constables appointed under the British Transport Commission Act 1949 s 53 (repealed) must be treated as a reference to the British Transport Police Force established by the Railways and Transport Safety Act 2003 Pt 3 (ss 18-71, Sch 4) (see PARA 281 et seq post), and a definition of the 'British Transport Police Force' or the 'British Transport Police' ceases to have effect: see Sch 5 para 4(1). As to the transfer of pensions made in relation to the British Transport Police Force Superannuation Fund see the British Transport Police (Transitional and Consequential Provisions) Order 2004, SI 2004/1573, art 9. The Secretary of State may make a substitution order in relation to any occupational pension scheme which is a new scheme, within the meaning of Sch 11 (as amended): see the Transport Act 1980 s 52B(1) (as added); and PARA 6 note 4 ante. For the meaning of 'occupational pension scheme' see PARA 6 note 4 ante; for the meaning of 'existing scheme' see PARA 8 note 3 post; and for the meaning of 'joint industry scheme' see PARA 11 note 5 post. As to the making of orders under or by virtue of the Railways Act 1993 generally see PARA 35 note 12 post; and in relation to Sch 11 (as amended) see PARA 6 ante.

3 For the meaning of 'pension' see PARA 6 note 4 ante.

4 Railways Act 1993 Sch 11 para 2(1). The Railways Pension Scheme Order 1994, SI 1994/1433 (amended by SI 1994/2005) has been made under the Railways Act 1993 Sch 11 para 2.

In the case of any pension scheme, 'eligible persons', means any person who is an employee of the British Railways Board or any subsidiary of the Board, or a publicly owned railway company or a body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement, but does not include any such person who participates in the Transport Police scheme: s 151(1), Sch 11 para 1(1) (definition amended by the Transport Act 2000 s 252, Sch 27 paras 17, 49(1), (2); the Railways Act 2005 s 59(6), Sch 13 Pt 1; and the Taxation of Pension Schemes (Consequential Amendments) Order 2006, SI 2006/745, art 6(a)). For these purposes, 'publicly owned railway company' means a company which is wholly owned by the Crown and which carries on, or is to carry on: (1) an undertaking derived, or to be derived (whether wholly or partly and whether directly or indirectly) from, or from some part of, an undertaking carried on by the British Railways Board or a wholly owned subsidiary of the Board; or (2) an undertaking in the course of which the company uses, or will use, any property, rights or liabilities acquired, or to be acquired (whether directly or indirectly) from the British Railways Board or a wholly owned subsidiary of the Board: s 151(1). For the purposes of the Railways Act 1993, a company is to be regarded as 'wholly owned by the Crown' at any time when it has no members other than: (a) the Secretary of State or a Government department (s 151(2)(a) (s 151(2)(a), (c) amended by the Railways Act 2005 Sch 13 Pt 1)); (b) a company which is itself wholly owned by the Crown (Railways Act 1993 s 151(2) (b)); or (c) a person acting on behalf of the Secretary of State, a Government department or such a company (s 151(2)(c) (as so amended)). For these purposes, 'subsidiary' and 'wholly owned subsidiary' have the same meanings as in the Companies Act 1985 s 736 (definition as substituted; prospectively repealed) (see further COMPANIES vol 14 (2009) PARA 25); Railways Act 1993 s 151(1). 'Company' means any body corporate (s 151(1)); and, for these purposes, 'body corporate' does not include a corporation sole, but includes a company incorporated elsewhere than in Great Britain (Companies Act 1985 s 740; definition applied by the Railways Act 1993 s 151(1)). As from a day to be appointed under the Companies Act 2006 s 1300(2), the Companies Act 1985 s 740 is repealed by the Companies Act 2006 s 1295, Sch 16. However, at the date at which this volume states the law, no such day has been appointed. For the meaning of 'Great Britain' see PARA 29 note 3 post. For the meaning of 'franchise agreement' see PARA 130 note 4 post; definition applied by virtue of the Railways Act 1993 Sch 11 para 1(4) (amended by the Transport Act 2000 s 247, Sch 31 Pt IV). For the meaning of 'franchise operator' see PARA 130 note 4 post; definition applied by virtue of the Railways Act 1993 Sch 11 para 1(4) (as so amended). For the meaning of 'franchisee' see PARA 130 note 4 post; definition applied by virtue of Sch 11 para 1(4) (as so amended). As to the meaning of 'employee' see note 5 infra. As to the establishment and abolition of the British Railways Board see PARA 44 post.

5 For these purposes, 'participant', in relation to a pension scheme or a section of a pension scheme, means a person to whom pension rights are accruing under the scheme or section by virtue of his employment in a class or description of employment to which the scheme or section relates; and cognate expressions are construed accordingly: Railways Act 1993 Sch 11 para 1(1). 'Employment' means employment under a contract of service or apprenticeship (whether express or implied and, if express, whether oral or in writing), and cognate expressions must be construed accordingly: Sch 11 para 1(1). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5). For the meaning of 'pension rights' see PARA 6 note 4 ante.

6 For these purposes, 'member', in relation to a pension scheme, means any person who participates in that scheme, any pensioner under that scheme, and any other person who has pension rights under that scheme; and 'membership' is construed accordingly: *ibid* Sch 11 para 1(1).

7 *Ibid* Sch 11 para 2(2)(a).

8 *Ibid* Sch 11 para 2(2)(b).

9 *Ibid* Sch 11 para 2(2)(c).

10 *Ibid* Sch 11 para 2(2)(d).

11 *Ibid* Sch 11 para 2(2)(e).

12 For these purposes, 'functions' includes powers, duties and obligations: *ibid* s 151(1).

13 *Ibid* Sch 11 para 2(2)(f).

14 *Ie* under *ibid* Sch 11 para 2: see Sch 11 para 2(3).

15 *Ibid* Sch 11 para 2(3).

UPDATE

7 Establishment of new schemes

NOTE 4--In definitions of 'subsidiary' and 'wholly owned subsidiary' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25); Railways Act 1993 s 151(1) (amended by SI 2009/1941). In definition of 'body corporate' reference to Companies Act 1985 s 740 now to Companies Act 2006 s 1173(1) (see COMPANIES vol 14 (2009) PARA 1); Railways Act 1993 s 151(1) (amended by SI 2009/1941).

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8. Amendment of existing schemes.

The Secretary of State¹ may by order² amend: (1) the trust deed of any existing scheme³; (2) the rules of any such scheme⁴; or (3) any other instrument relating to the constitution, management or operation of any such scheme⁵; and any reference to amending an existing scheme in the provisions of the Railways Act 1993 which relate to pensions⁶ accordingly includes a reference to amending any such trust deed, rules or other instrument⁷. Without prejudice to the generality of this provision⁸, such an order may, in particular, amend an existing scheme so as to alter any provision, or so as to make provision, with respect to any of the matters in relation to which an order establishing a new scheme may make provision⁹.

However, an order made under head (1) to head (3) above¹⁰ may not make any amendment to a scheme which would:

- 7 (a) prejudice registration of that scheme for the purposes of Part 4 of the Finance Act 2004¹¹;
- 8 (b) prevent the scheme from being a contracted-out scheme¹²;
- 9 (c) to any extent deprive a member¹³ of the scheme of pension rights¹⁴ which accrued to him under the scheme before the coming into force of the amendment¹⁵; or
- 10 (d) provide for persons who are not eligible persons¹⁶ to become members of the scheme¹⁷.

The Secretary of State may not make such an order¹⁸ except with the consent¹⁹ of the trustees²⁰ of the occupational pension scheme to which the order relates²¹.

1 As to the Secretary of State see PARA 35 post.

2 As to the making of orders under or by virtue of the Railways Act 1993 s 134(1), Sch 11 (as amended) generally see Sch 11 para 1(3) (as to which see PARA 7 note 2 ante) and for the purposes of Sch 11 para 3 (as amended) see also Sch 11 para 13 (as to which see PARA 6 ante).

3 Ibid Sch 11 para 3(1)(a). For these purposes, 'existing scheme' means any occupational pension scheme (other than a new scheme): (1) which is a scheme for the provision of pensions for or in respect of persons with service in the railway industry (whether or not pensions may also be provided under the scheme for or in respect of persons without such service); and (2) which the Secretary of State by order designates as an existing scheme for the purposes of Sch 11 (as amended): Sch 11 para 1(1). A designation of existing schemes for the purposes of Sch 11 para 1(1) has been made under the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432: see art 15, Schedule. For the meanings of 'occupational pension scheme' and 'pension' see PARA 6 note 4 ante; and for the meaning of 'new scheme' see PARA 7 note 2 ante.

4 Railways Act 1993 Sch 11 para 3(1)(b).

5 Ibid Sch 11 para 3(1)(c).

6 Ie any reference in ibid Sch 11 (as amended): see Sch 11 para 3(1).

7 Ibid Sch 11 para 3(1). Similarly, any reference in Sch 11 (as amended) to a pension scheme includes a reference to the scheme as amended under or by virtue of Sch 11 (as amended): see Sch 11 para 1(2). Amendments to existing schemes have been made pursuant to Sch 11 para 3 (as amended) under the Railway Pensions (Transfer and Miscellaneous Provisions) Order 1994, SI 1994/2005: see art 4, Sch 3.

- 8 le the Railways Act 1993 Sch 11 para 3(1): see Sch 11 para 3(2).
- 9 Ibid Sch 11 para 3(2). The text refers to any of the matters specified in Sch 11 para 2(2)(a)-(f) for the purposes of an order made under Sch 11 para 2(1) (see PARA 7 ante): see Sch 11 para 3(2).
- 10 le under ibid Sch 11 para 3 (as amended): see Sch 11 para 3(3).
- 11 Ibid Sch 11 para 3(3)(a) (substituted by the Taxation of Pension Schemes (Consequential Amendments) Order 2006, SI 2006/745, art 6(b)). As to the purposes of the Finance Act 2004 Pt 4 (ss 149-284) (as amended) (pension schemes etc) see SOCIAL SECURITY AND PENSIONS.
- 12 Railways Act 1993 Sch 11 para 3(3)(b). The text refers to a contracted-out scheme for the purposes of the Pension Schemes Act 1993 Pt III (ss 7-68) (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 878 et seq): see the Railways Act 1993 Sch 11 para 3(3)(b).
- 13 For the meaning of 'member' see PARA 7 note 6 ante.
- 14 For the meaning of 'pension rights' see PARA 6 note 4 ante.
- 15 Railways Act 1993 Sch 11 para 3(3)(c).
- 16 For the meaning of 'eligible persons' see PARA 7 note 4 ante.
- 17 Railways Act 1993 Sch 11 para 3(3)(d).
- 18 le under ibid Sch 11 para 3 (as amended): see Sch 11 para 3(4) (as amended).
- 19 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).
- 20 For these purposes, 'trustees', in relation to any pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme: ibid Sch 11 para 1(1).
- 21 Ibid Sch 11 para 3(4) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 49(1), (3)).

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9. Transfer of pension rights and corresponding assets and liabilities.

Where persons with pension rights¹ under any existing or new scheme² ('the transferor scheme') are eligible to be members³ of another scheme ('the transferee scheme') which is either: (1) an existing or new scheme⁴; or (2) the Transport Police scheme⁵, the Secretary of State⁶ may by order⁷ make provision for those persons to be members of the transferee scheme instead of the transferor scheme and for their pension rights under the transferor scheme to be transferred so as to become pension rights under the transferee scheme⁸.

Where any pension rights are so transferred, the Secretary of State may by order make provision for: (a) such of the assets held for the purposes of the transferor scheme⁹; and (b) such of the liabilities under or in relation to that scheme of any employers or trustees¹⁰, as he may consider appropriate in consequence of that transfer to be correspondingly transferred so as to become assets or, as the case may be, liabilities in relation to the transferee scheme¹¹.

Where any pension rights are so transferred, the Secretary of State may by order:

- 11 (i) impose on the trustees of the transferee scheme, or on the employer (if any) of the person whose pension rights are transferred, duties with respect to: (A) the participation¹² of that person or that employer in the scheme¹³; or (B) the payment of contributions by that employer under the scheme¹⁴, in accordance with the rules of the scheme¹⁵; and
- 12 (ii) make provision requiring any person whose approval or consent¹⁶ is necessary in connection with the doing of anything required to be done by virtue of such an order¹⁷ to give that approval or consent¹⁸.

The Secretary of State may by order make provision for the winding up of the transferor scheme, whether in whole or in part, in connection with, or in consequence of, any transfers under these provisions¹⁹; but he may not make such an order except with the consent of the trustees of the occupational pension schemes which are, or are to be, the transferor scheme and the transferee scheme²⁰.

1 For the meanings of 'pension' and 'pension rights' see PARA 6 note 4 ante.

2 For the meaning of 'new scheme' see PARA 7 note 2 ante; and for the meaning of 'existing scheme' see PARA 8 note 3 ante.

3 For the meaning of 'member' see PARA 7 note 6 ante.

4 Railways Act 1993 s 134(1), Sch 11 para 4(1)(a).

5 Ibid Sch 11 para 4(1)(b). For the meaning of 'Transport Police scheme' see PARA 7 note 2 ante.

6 As to the Secretary of State see PARA 35 post.

7 As to the making of orders under or by virtue of the Railways Act 1993 Sch 11 (as amended) generally see Sch 11 para 1(3) (as to which see PARA 7 note 2 ante) and for the purposes of Sch 11 para 4 (as amended) see also Sch 11 para 13 (as to which see PARA 6 ante).

8 Ibid Sch 11 para 4(1). As to the orders which have been made under Sch 11 para 4 (as amended) see the Railway Pensions (Transfer and Miscellaneous Provisions) Order 1994, SI 1994/2005, art 2, Schs 1-2 (which effected the transfer of eligible members, assets and liabilities from existing pensions schemes (primarily the British Rail Pension Scheme) to the Railways Pension Scheme (being a new scheme), and the winding up of certain existing schemes); and the Railway Pensions (Transfer of Pension Schemes) Order 2007, SI 2007/2205 (which effected the transfer of pension rights under six very old pension schemes, and the assets and liabilities of those schemes, into the 1994 Pensioners Section of the Railways Pension Scheme, and for the winding up of those schemes).

Nothing in the Railways Act 1993 affects the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (as to which see EMPLOYMENT vol 39 (2009) PARA 111 et seq) in their application in relation to a relevant transfer within the meaning of those regulations: Railways Act 1993 s 151(6). As to transfer mechanisms which apply to the franchising regime see PARA 139 et seq post.

9 Ibid Sch 11 para 4(2)(a).

10 Ibid Sch 11 para 4(2)(b). For the meaning of 'trustees' see PARA 8 note 20 ante.

11 Ibid Sch 11 para 4(2).

12 As to the meaning of 'participation' see PARA 7 note 5 ante.

13 Railways Act 1993 Sch 11 para 4(3)(a)(i).

14 Ibid Sch 11 para 4(3)(a)(ii).

15 Ibid Sch 11 para 4(3)(a).

16 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

17 Ie under ibid Sch 11 para 4 (as amended): see Sch 11 para 4(3)(b).

18 Ibid Sch 11 para 4(3)(b).

19 Ibid Sch 11 para 4(4). The text refers to any transfers under Sch 11 para 4 (as amended): see Sch 11 para 4(4). As to an order so made see note 8 supra.

20 Ibid Sch 11 para 4(5) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 49(1), (3)).

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10. Powers of protection.

The Secretary of State¹ may by order² make provision for the purpose of protecting the interests of protected persons³ in respect of their pension rights⁴. Without prejudice to the generality of this provision⁵, such an order may make provision for the purpose of securing:

- 13 (1) that the relevant pension rights⁶ of protected persons are no less favourable as a result of: (a) any amendment of an occupational pension scheme⁷; (b) any transfer of pension rights (whether made between occupational pension schemes or sections of an occupational pension scheme or otherwise)⁸; or (c) any winding up of an occupational pension scheme, in whole or in part⁹, than they would have been apart from the amendment, transfer or winding up, as the case may be¹⁰;
- 14 (2) that a person who is a protected person by virtue of his participation in an existing scheme¹¹ is not prevented, otherwise than by reason of either of the following events¹², that is to say: (a) the continuity of his period of employment is broken¹³; or (b) he voluntarily withdraws from an occupational pension scheme¹⁴, from participating¹⁵ in some occupational pension scheme and acquiring pension rights under that scheme which are no less favourable than those which would have been provided under his former scheme¹⁶ in accordance with the rules of that scheme as in force immediately before the coming into force of the order¹⁷; or
- 15 (3) that the employer of a person falling within head (2) above is required to provide an occupational pension scheme in which the person may participate and to which pension rights of his, and assets and liabilities relating to, or representative of, those pension rights, may be transferred¹⁸.

In determining a person's relevant pension rights for these purposes¹⁹, where the rules of a pension scheme make provision requiring pension rights which have accrued to a person to be enhanced in consequence of increases in remuneration after the accrual of the pension rights, that provision, and any enhancement resulting from it, are to be treated, so far as relating to any enhancement in consequence of increases in remuneration after the passing of the Railways Act 1993, as pension rights accruing at the time of the increase in remuneration in question²⁰.

An order made for the purpose of protecting the interests of protected persons in respect of their pension rights²¹ may make provision for and in connection with the making of elections in a prescribed manner by protected persons for such orders²² not to have effect with respect to them or their surviving dependants except to such extent (if any) as may be specified in the election or subject to such conditions (if any) as may be so specified²³. An order made for the purpose of protecting the interests of protected persons in respect of their pension rights²⁴ may make provision also for such orders to cease to have effect in relation to a protected person if the continuity of his period of employment is broken²⁵, if he voluntarily withdraws from an occupational pension scheme²⁶, or if he requests that his pension rights be transferred from an occupational pension scheme²⁷, except in such circumstances or to such extent as may be prescribed²⁸.

Without prejudice to the generality of the provisions relating to the powers of protection²⁹, an order made for those purposes³⁰ may impose on any person falling within head (A) to head (D) below duties with respect to:

- 16 (i) the provision of a pension scheme³¹;
- 17 (ii) the terms of any pension scheme required to be provided by virtue of head (i) above³²;
- 18 (iii) the amendment, or the preservation from amendment, of a pension scheme³³;
- 19 (iv) the acceptance of protected persons as members³⁴ of a pension scheme³⁵;
- 20 (v) the acceptance (so as to become included among the property, rights and liabilities held for the purposes of a pension scheme or to which a pension scheme is subject) of property, rights and liabilities relating to, or representative of, pension rights of protected persons³⁶;
- 21 (vi) the making or refunding of contributions³⁷;
- 22 (vii) the purchase of annuities³⁸;
- 23 (viii) the winding up of a pension scheme, in whole or in part³⁹,

and may make provision requiring any person whose approval or consent⁴⁰ is necessary in connection with the doing of anything required to be done by virtue of such an order, so far as relating to matters specified in head (i) to head (viii) above, to give that approval or consent⁴¹. The persons upon whom such duties may be imposed are as follows:

- 24 (A) any person who is or has been the employer⁴² of a protected person⁴³;
- 25 (B) any person who contributes to a pension scheme as an employer, whether or not he is or has been the employer of a protected person⁴⁴;
- 26 (C) the trustees⁴⁵ of any pension scheme of which a protected person is a member or to which pension rights of a protected person may be transferred⁴⁶;
- 27 (D) any person who has power to amend or wind up a pension scheme under which a protected person has pension rights⁴⁷.

An order under any of the provisions relating to protection of pensions rights⁴⁸ may include provision for disputes arising under the order to be referred to arbitration⁴⁹ or for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description⁵⁰.

1 As to the Secretary of State see PARA 35 post.

2 As to the making of orders under or by virtue of the Railways Act 1993 s 134(1), Sch 11 (as amended) generally see PARA 7 note 2 ante. The Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432 (amended by SI 1994/2005) has been made under the Railways Act 1993 Sch 11 paras 5-7 (as amended): see notes 3, 6, 10, 23, 25-26, 28, 41, 49, 50 infra.

3 In *ibid* Sch 11 (as amended), 'protected person' has the meaning given by Sch 11 para 5 (Sch 11 para 1(1)); and, accordingly, means:

- 4 (1) any person who immediately before 5 November 1993 (ie before the passing of the Railways Act 1993): (a) is an employee of the British Railways Board or of a subsidiary of the board (s 151(1), Sch 11 para 5(a)(i)); and (b) is participating in an existing scheme (Sch 11 para 5(a)(ii));
- 5 (2) any person not falling within head (1) supra: (a) who either is, immediately before the passing of the Railways Act 1993, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee (Sch 11 para 5(b)(i)); (b) who has participated in an existing scheme before the passing of the Railways Act 1993 (Sch 11 para 5(b)(ii)); and (c) who fulfils prescribed conditions (Sch 11 para 5(b)(iii));
- 6 (3) any person who, immediately before the passing of the Railways Act 1993, has pension rights under an existing scheme but is not participating in that scheme (Sch 11 para 5(c));

- 7 (4) any person who, after the passing of the Railways Act 1993, acquires pension rights: (a) in consequence of the death of a person falling within heads (1), (2) or (3) supra (Sch 11 para 5(d)(i)); and (b) by virtue of the participation of that other person in an existing scheme, or in an occupational pension scheme from which pension rights of that person have been transferred, whether directly or indirectly, to an existing scheme (Sch 11 para 5(d)(ii)).

For these purposes, 'prescribed' means specified in, or determined in accordance with, an order made by the Secretary of State: Sch 11 para 1(1). Accordingly, as to the conditions specified for the purposes of head (2)(c) supra see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 2. For the meaning of 'existing scheme' see PARA 8 note 3 ante; for the meanings of 'occupational pension scheme', 'pension' and 'pension rights' see PARA 6 note 4 ante; and for the meaning of 'subsidiary' see PARA 7 note 4 ante. As to the meanings of 'employee' and 'participation' see PARA 7 note 5 ante. As to the establishment and abolition of the British Railways Board see PARA 44 post.

4 Railways Act 1993 Sch 11 para 6(1).

5 le ibid Sch 11 para 6(1) (see the text and notes 1-4 supra): see Sch 11 para 6(2).

6 For the purposes of ibid Sch 11 para 6 (as amended), the 'relevant pension rights' of a protected person are so much of his pension rights as consist of or otherwise represent:

- 8 (1) in the case of a person who is a protected person by virtue of Sch 11 para 5(a), (b) or (c) (see note 3 heads (1)-(3) supra), any pension rights which, immediately before the passing of the Railways Act 1993, he had under the existing scheme mentioned in the paragraph in question (Sch 11 para 6(3)(a));
- 9 (2) in the case of a person who is a protected person by virtue of Sch 11 para 5(a) or (b), any pension rights which he acquires, or has acquired, by virtue of his participation in an occupational pension scheme during the protected period in his case (Sch 11 para 6(3)(b)); and
- 10 (3) in the case of a person who is a protected person by virtue of Sch 11 para 5(d) (see note 3 head (4) supra), any pension rights which he acquires, or has acquired, after the passing of the Railways Act 1993 and in consequence of the death of the other person mentioned in Sch 11 para 5(d) ('the deceased'), being: (a) pension rights under the existing scheme mentioned in Sch 11 para 5, so far as referable to pension rights which the deceased had under that scheme before the passing of the Railways Act 1993 (Sch 11 para 6(3)(c)(i)); (b) pension rights under any occupational pension scheme, so far as referable to pension rights which, before the passing of the Railways Act 1993, the deceased had under the existing scheme mentioned in Sch 11 para 5(d) and which have been transferred from that existing scheme, whether directly or indirectly (Sch 11 para 6(3)(c)(ii)); or (c) pension rights under any occupational pension scheme, so far as referable to the participation of the deceased in that or any other occupational pension scheme during the protected period (Sch 11 para 6(3)(c)(iii)).

For the purposes of Sch 11 para 6(3), 'protected period' means:

- 11 (i) in the case of a person who is a protected person by virtue of Sch 11 para 5(a), the period beginning with the passing of the Railways Act 1993 and ending with whichever of the following events first occurs (Sch 11 para 6(4)(a)), that is to say: (A) the continuity of the person's period of employment is broken (Sch 11 para 6(4)(a)(i)); or (B) he voluntarily withdraws from an occupational pension scheme (Sch 11 para 6(4)(a)(ii));
- 12 (ii) in the case of a person who is a protected person by virtue of Sch 11 para 5(b), a period beginning at such time as may be prescribed and ending with whichever of the following events first occurs (Sch 11 para 6(4)(b)), that is to say: (A) the continuity of the person's period of employment is broken (Sch 11 para 6(4)(b)(i)); or (B) he voluntarily withdraws from an occupational pension scheme (Sch 11 para 6(4)(b)(ii)); and
- 13 (iii) in the case of a person who is a protected person by virtue of Sch 11 para 5(d), the period (if any) which is the protected period in the case of the other person mentioned in Sch 11 para 5(d) (Sch 11 para 6(4)(c)).

As to the time prescribed for the purposes of head (ii) supra see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 3. As to circumstances in which breaks in the continuity of a person's period of employment or voluntary withdrawals are disregarded for the purposes, inter alia, of head (i) and head (ii) supra see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, arts 9-10; and the text and notes 25-26 infra.

7 Railways Act 1993 Sch 11 para 6(2)(a)(i).

8 Ibid Sch 11 para 6(2)(a)(iii) (amended by the Transport Act 2000 s 245(1)).

9 Railways Act 1993 Sch 11 para 6(2)(a)(iii).

10 Ibid Sch 11 para 6(2)(a). As to the obligation to provide such a scheme as is mentioned in the text see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 4. As a matter of construction, nothing in the Railways Act 1993 Sch 11 (as amended) prevented a court from looking outside the terms of two schemes, to see if one was less favourable than the other, the legislature having been likely to be concerned to protect practical rights, sounding in money, rather than mere legal ones: see *South West Trains Ltd v Wightman* [1997] OPLR 249, (1998) Times, 14 January (regarding amendments proposed to be made to the South West Trains Ltd shared cost section of the railways pension scheme).

11 Ie by virtue of the Railways Act 1993 Sch 11 para 5(a) or (b) (see note 3 heads (1), (2) supra): see Sch 11 para 6(2)(b).

12 Ibid Sch 11 para 6(2)(b).

13 Ibid Sch 11 para 6(2)(b)(i). For the meaning of 'employment' see PARA 7 note 5 ante. As to circumstances in which breaks in the continuity of a person's period of employment are disregarded see note 6 supra.

14 Ibid Sch 11 para 6(2)(b)(ii). As to circumstances in which voluntary withdrawals from an occupational pension scheme are disregarded see note 6 supra.

15 As to the meaning of 'participating' see PARA 7 note 5 ante.

16 In the Railways Act 1993 Sch 11 para 6(2)(b), 'former scheme', in relation to a protected person, means the existing scheme mentioned in Sch 11 para 5(a) or (b) (see note 3 heads (1), (2) supra) as the case may be: see Sch 11 para 6(2).

17 Ibid Sch 11 para 6(2)(b). As to the obligation to provide such a scheme as is mentioned in the text see note 10 supra.

18 Ibid Sch 11 para 6(2)(c). As to the obligation to provide such a scheme as is mentioned in the text see note 10 supra.

19 Ie for the purposes of ibid Sch 11 para 6 (as amended): see PARA 6(5).

20 Ibid Sch 11 para 6(5).

21 Ie an order made under ibid Sch 11 para 6 (as amended): see Sch 11 para 6(6).

22 Ie orders under ibid Sch 11 para 6 (as amended) other than orders by virtue of Sch 11 para 6(6): see Sch 11 para 6(6).

23 Ibid Sch 11 para 6(6). In Sch 11 para 6(6), 'surviving dependant', in relation to a protected person, means any person who may acquire, in consequence of the death of the protected person, pension rights referable to relevant pension rights of the protected person: Sch 11 para 6(7). As to the order making provision for and in connection with the making of elections as is mentioned in the text see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 12 (amended by SI 1994/2005).

24 Ie an order made under the Railways Act 1993 Sch 11 para 6 (as amended): see Sch 11 para 6(8).

25 Ibid Sch 11 para 6(8)(a). Circumstances may be prescribed in which a break in the continuity of a person's period of employment is to be disregarded for prescribed purposes of Sch 11 para 6 (as amended): Sch 11 para 6(9). As to the circumstances so prescribed see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 9 (amended by the Transport Act 2000 s 245(2), (5), (8); and SI 1994/2005).

The Employment Rights Act 1996 Pt XIV Ch I (ss 210-219) (as amended) (continuous employment: see EMPLOYMENT vol 39 (2009) PARA 105 et seq), except s 218(6), applies for the purposes of the Railways Act 1993 Sch 11 para 6 (as amended) as it applies for the purposes of the Employment Rights Act 1996: Railways Act 1993 Sch 11 para 6(10) (substituted by the Employment Rights Act 1996 s 240, Sch 1 para 60(1), (3)).

26 Railways Act 1993 Sch 11 para 6(8)(b). Circumstances may be prescribed in which a person's voluntary withdrawal from an occupational pension scheme is to be disregarded for prescribed purposes of Sch 11 para 6 (as amended): Sch 11 para 6(9). As to the circumstances so prescribed see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 10.

27 Railways Act 1993 Sch 11 para 6(8)(c).

28 Ibid Sch 11 para 6(8). As to the cessation of the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432 and the prescribed exceptions as mentioned in the text see art 8.

29 Ie without prejudice to the generality of the Railways Act 1993 Sch 11 para 6 (as amended): see Sch 11 para 7(1).

30 Ie made under Sch 11 para 6 (as amended): see Sch 11 para 7(1).

31 Ibid Sch 11 para 7(1)(a).

32 Ibid Sch 11 para 7(1)(b).

33 Ibid Sch 11 para 7(1)(c). See *South West Trains Ltd v Wightman* [1997] OPLR 249, (1998) Times, 14 January (cited in note 10 supra).

34 For the meaning of 'member' see PARA 7 note 6 ante.

35 Railways Act 1993 Sch 11 para 7(1)(d).

36 Ibid Sch 11 para 7(1)(e).

37 Ibid Sch 11 para 7(1)(f).

38 Ibid Sch 11 para 7(1)(g).

39 Ibid Sch 11 para 7(1)(h).

40 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

41 Ibid Sch 11 para 7(1). As to the duties so imposed on the persons mentioned in Sch 11 para 7(2) (as to which see head (A) to head (D) in the text) see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, arts 5-7 (arts 6, 7 amended by the Transport Act 2000 s 245(2)-(4), (8); and SI 1994/2005).

42 As to the meaning of 'employer' see PARA 7 note 5 ante.

43 Railways Act 1993 Sch 11 para 7(2)(a).

44 Ibid Sch 11 para 7(2)(b).

45 For the meaning of 'trustees' see PARA 8 note 20 ante.

46 Railways Act 1993 Sch 11 para 7(2)(c).

47 Ibid Sch 11 para 7(2)(d).

48 Ie an order under either ibid Sch 11 para 5 (see note 3 supra) or Sch 11 para 6 (as amended) (see notes 1-28 supra): see Sch 11 para 7(3).

49 Ibid Sch 11 para 7(3)(a). The order so made has now been revoked: see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 13 (revoked).

50 Railways Act 1993 Sch 11 para 7(3)(b). The order so made has now been revoked: see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 14 (revoked).

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11. Entitlement to participate in the joint industry scheme.

The Secretary of State¹ may by order² make provision conferring upon any person to whom head (a) or head (b) below³ apply:

- 28 (1) who is participating⁴, or who at or after the making of the order begins to participate, in the joint industry scheme⁵; and
- 29 (2) who fulfils the qualifying conditions⁶,

the right to continue to participate in the joint industry scheme, in accordance with the rules of that scheme, unless and until the termination conditions⁷ become fulfilled in the case of that person⁸. Entitlement to participate in the joint industry scheme applies to⁹:

- 30 (a) any person who immediately before 5 November 1993¹⁰: (i) was an employee of the British Railways Board¹¹ or of a subsidiary¹² of the Board¹³; and (ii) is participating in an existing scheme¹⁴; and
- 31 (b) any person not falling within head (a) above: (i) who either is, immediately before 5 November 1993¹⁵, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee¹⁶; (ii) who has participated in an existing scheme before 5 November 1993¹⁷; and (iii) who fulfils prescribed conditions¹⁸.

Circumstances may be prescribed in which:

- 32 (A) a break in the continuity of a person's period of employment¹⁹;
- 33 (B) a person's voluntary withdrawal from an occupational pension scheme²⁰; or
- 34 (C) a period during which a person is not in the employment of an employer engaged in the railway industry²¹,

is to be disregarded for the purpose of determining whether the person fulfils the qualifying conditions or whether the termination conditions have become fulfilled in his case²².

1 As to the Secretary of State see PARA 35 post.

2 The Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 11 (amended by the Transport Act 2000 s 245(2), (6), (8)) has been made under the Railways Act 1993 s 134(1), Sch 11 para 8: see notes 6, 8, 18-21 infra. As to the making of orders under or by virtue of the Railways Act 1993 Sch 11 (as amended) generally see PARA 7 note 2 ante.

3 Ie any person to whom ibid Sch 11 para 8 applies: see Sch 11 para 8(1).

4 As to the meaning of 'participating' see PARA 7 note 5 ante.

5 Railways Act 1993 Sch 11 para 8(1)(a). For these purposes, 'joint industry scheme' means such occupational pension scheme as the Secretary of State may by order designate as the joint industry scheme for the purposes of Sch 11 (as amended): Sch 11 para 1(1). For the meaning of 'occupational pension scheme' see PARA 6 note 4 ante.

The provision contained in Sch 11 para 6(10) (as substituted) (ie application of the Employment Rights Act 1996 Pt XIV Ch I (ss 210-219) (as amended), except s 218(6): see PARA 10 note 25 ante) has effect for the purposes of the Railways Act 1993 Sch 11 para 8 as it has effect for the purposes of Sch 11 para 6 (as amended): Sch 11 para 8(12).

6 Ibid Sch 11 para 8(1)(b). For the purposes of Sch 11 para 8, a person fulfils the 'qualifying conditions' if:

- 14 (1) the continuity of his period of employment has not been broken during the intervening period (Sch 11 para 8(3)(a));
- 15 (2) he has not withdrawn voluntarily from an occupational pension scheme during that period (Sch 11 para 8(3)(b)); and
- 16 (3) he has at all times during that period been in the employment of an employer engaged in the railway industry (Sch 11 para 8(3)(c)).

For these purposes, 'intervening period' means the period which begins at 5 November 1993 (ie at the passing of the Railways Act 1993) and ends: (a) at the time when the person in question begins to participate in the joint industry scheme (Sch 11 para 8(4)(a)); or (b) at the coming into force of the order under Sch 11 para 8 which confers upon that person the right mentioned in Sch 11 para 8(1), or which would have conferred that right upon him, had he satisfied the qualifying conditions (Sch 11 para 8(4)(b)), whichever is the later (Sch 11 para 8(4)). The employers who are to be regarded for the purposes of Sch 11 para 8 as 'engaged in the railway industry' are those who carry on activities of a class or description specified for the purposes of Sch 11 para 8(7) by the Secretary of State in an order under Sch 11 para 8; and the Secretary of State may so specify any class or description of activity which, in his opinion, falls within, or is related to or connected with, the railway industry: Sch 11 para 8(7). For the meanings of 'employer', 'employment' and 'participation' see PARA 7 note 5 ante. For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5). As to the activities which have been specified for the purposes of Sch 11 para 8(7) see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 11(4). As to the circumstances mentioned in heads (1) to (3) supra see further notes 19-21 infra.

7 The 'termination conditions' become fulfilled for the purposes of the Railways Act 1993 Sch 11 para 8 in the case of any person if:

- 17 (1) the continuity of his period of employment is broken (Sch 11 para 8(5)(a));
- 18 (2) he withdraws voluntarily from the joint industry scheme (Sch 11 para 8(5)(b)); or
- 19 (3) he is not in the employment of any employer engaged in the railway industry (Sch 11 para 8(5)(c)).

As to the circumstances mentioned in heads (1) to (3) supra see further notes 19-21 infra.

8 Ibid Sch 11 para 8(1).

An order under Sch 11 para 8 may:

- 20 (1) impose on the trustees of the joint industry scheme, or on the employer (if any) of a person for the time being entitled to the right conferred by virtue of Sch 11 para 8(1), duties with respect to: (a) the participation of that person or that employer in the scheme (Sch 11 para 8(8)(a)(i)); or (b) the payment of contributions by that employer under the scheme (Sch 11 para 8(8)(a)(ii)), in accordance with the rules of the scheme (Sch 11 para 8(8)(a)); and
- 21 (2) make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of an order under Sch 11 para 8 to give that approval or consent (Sch 11 para 8(8)(b)).

Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4). For the meaning of 'trustees' see PARA 8 note 20 ante. As to the meaning of 'participation' see PARA 7 note 5 ante. An order under Sch 11 para 8 may make provision for the purpose of preventing a person who would otherwise be entitled to the right conferred by virtue of Sch 11 para 8(1) from continuing to participate in the joint industry scheme in circumstances where his continued participation in that scheme would in the opinion of a prescribed person:

- 22 (i) prejudice any approval of that scheme for the purposes of the Income and Corporation Taxes Act 1988 Pt XIV Ch I (ss 590-612) (repealed) (retirement benefit schemes: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 747 et seq) (Railways Act 1993 Sch 11 para 8(9)(a)); or

- 23 (ii) prevent the scheme from being a contracted-out scheme for the purposes of the Pension Schemes Act 1993 Pt III (ss 7-68) (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 878 et seq) (Railways Act 1993 Sch 11 para 8(9)(b)).

An order under Sch 11 para 8 may include provision: (A) for disputes arising under the order to be referred to arbitration (Sch 11 para 8(10)(a)); or (B) for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description (Sch 11 para 8(10)(b)). An order under Sch 11 para 8 may make provision for and in connection with the making of elections in a prescribed manner by persons who would otherwise be entitled by virtue of Sch 11 para 8(1) to the right there mentioned for orders under Sch 11 para 8 (other than orders by virtue of Sch 11 para 8(11)) not to have effect with respect to them: Sch 11 para 8(11). For the purposes of head (i) supra, by virtue of the Interpretation Act 1978 s 17(2)(b), see now the Finance Act 2004 Pt 4 (ss 149-284) (as amended) (pension schemes etc); and INCOME TAXATION; SOCIAL SECURITY AND PENSIONS.

For these purposes, 'prescribed' means specified in, or determined in accordance with, an order made by the Secretary of State: Railways Act 1993 Sch 11 para 1(1). Accordingly, as to the order made for the purposes of Sch 11 para 8(1), (8)-(11) see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 11(1), (5)-(8).

9 le the persons to whom the Railways Act 1993 Sch 11 para 8 applies: see Sch 11 para 8(2).

10 Ibid Sch 11 para 8(2)(a). The date of 5 November 1993 refers to the date of the passing of the Railways Act 1993.

11 As to the establishment and abolition of the British Railways Board see PARA 44 post.

12 For the meaning of 'subsidiary' see PARA 7 note 4 ante.

13 Railways Act 1993 s 151(1), Sch 11 para 8(2)(a)(i).

14 Ibid Sch 11 para 8(2)(a)(ii). For the meaning of 'existing scheme' see PARA 8 note 3 ante.

15 As to the significance of the date mentioned in the text see note 10 supra.

16 Railways Act 1993 Sch 11 para 8(2)(b)(i).

17 Ibid Sch 11 para 8(2)(b)(ii). As to the significance of the date mentioned in the text see note 10 supra.

18 Ibid Sch 11 para 8(2)(b)(iii). As to the conditions specified for the purposes of Sch 11 para 8(2)(b)(iii) see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 11(2).

19 Railways Act 1993 Sch 11 para 8(6)(a). As to the order so made see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 11(3)(a).

20 Railways Act 1993 Sch 11 para 8(6)(b). As to the order so made see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 11(3)(b).

21 Railways Act 1993 Sch 11 para 8(6)(c). As to the order so made see the Railway Pensions (Protection and Designation of Schemes) Order 1994, SI 1994/1432, art 11(3)(c).

22 Railways Act 1993 Sch 11 para 8(6).

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12. Government guarantees to trustees of certain new schemes.

In respect of pension rights¹, the Secretary of State²: (1) must give to the trustees³ of any new scheme⁴ which satisfies the conditions set out in head (a) and head (b) below⁵; and (2) may give to the trustees of any new scheme which satisfies the conditions set out in head (i) and head (ii) below⁶, a guarantee⁷ in respect of their liabilities to make payments under the scheme⁸.

For the purposes of head (1) above, a new scheme satisfies the conditions if:

- 35 (a) all the members of the scheme are persons whose pension rights under the scheme are pension rights which have been transferred, so as to become pension rights under that scheme⁹; and
- 36 (b) the rules of the scheme prevent any member of the scheme from being a participant¹⁰ in the scheme¹¹.

For the purposes of head (2) above, a new scheme satisfies the conditions if:

- 37 (i) the scheme is a closed scheme¹²; and
- 38 (ii) at the date on which the scheme becomes a closed scheme, all the members of the scheme are: (A) participants in the scheme to whom pension rights under the scheme are accruing by virtue of their employment¹³ with a relevant employer¹⁴; or (B) pensioners or deferred pensioners¹⁵ under the scheme whose pension rights under the scheme derive in whole or in part from their, or some other person's, participation in an occupational pension scheme¹⁶ as an employee of a relevant employer¹⁷.

The Secretary of State must consider any representations made by the trustees of a new scheme which satisfies these conditions¹⁸, concerning their ability to meet their liabilities to make payments in respect of pension rights under the scheme¹⁹.

Classes or descriptions of person may be prescribed²⁰ whose membership of, or participation in, a new scheme is to be disregarded for the purpose of determining whether the new scheme satisfies the conditions set out either for the purposes of head (1) above²¹ or for the purposes of head (2) above²².

1 For the meaning of 'pension rights' see PARA 6 note 4 ante.

2 As to the Secretary of State see PARA 35 post.

3 For the meaning of 'trustees' see PARA 8 note 20 ante.

4 The Railways Act 1993 s 134(1), Sch 11 para 11 (as amended) applies in relation to a section of a new scheme as it applies in relation to a new scheme; and any reference in Sch 11 para 11 (as amended) to a new scheme, a closed scheme, a pension scheme or a member is to be construed accordingly: Sch 11 para 11(2). For these purposes, 'closed scheme' means a pension scheme to which no new members are to be admitted, but under which pensions and other benefits continue to be provided: Sch 11 para 11(10). For the meaning of 'pension' see PARA 6 note 4 ante; for the meaning of 'new scheme' see PARA 7 note 2 ante; and for the meaning

of 'member' see PARA 7 note 6 ante. As to the meaning of references to a 'pension scheme' see PARA 8 note 7 ante.

5 Ibid Sch 11 para 11(1)(a). The text refers to the conditions set out in Sch 11 para 11(3) (see head (a) and head (b) in the text).

6 Ibid Sch 11 para 11(1)(b). The text refers to the conditions set out in Sch 11 para 11(4) (see head (i) and head (ii) in the text).

7 Any guarantee under ibid Sch 11 para 11 (as amended) must be given in such manner, and on such terms and conditions, as the Secretary of State may, after consultation with the trustees of, and the actuary to, the scheme in question, think fit (Sch 11 para 11(8)); and, without prejudice to the generality of those provisions, the terms and conditions on which a guarantee under Sch 11 para 11 (as amended) may be given include terms and conditions:

24 (1) with respect to any matter relating to payment under the guarantee (Sch 11 para 11(8)(a)), including:

1. (a) the circumstances in which payment under the guarantee falls to be made (Sch 11 para 11(8)(a)(i));
1
2. (b) the amounts, or the method of determining the amounts, of any payments that fall to be so made (Sch 11 para 11(8)(a)(ii));
2
3. (c) the persons to whom any such payments are to be made (Sch 11 para 11(8)(a)(iii));
3

25 (2) with respect to any matter relating to the management, affairs or winding up of the scheme (Sch 11 para 11(8)(b)), including:

4. (a) the policy to be followed in relation to the investment of assets held for the purposes of the scheme (Sch 11 para 11(8)(b)(i)); and
4
5. (b) the distribution of any surplus which may arise under the scheme (Sch 11 para 11(8)(b)(ii)); or
5

26 (3) requiring or precluding, or otherwise with respect to, amendment of the rules of the scheme (Sch 11 para 11(8)(c)).

Heads (1)(a)-(c) and heads (2)(a), (2)(b) supra are without prejudice to the generality of the preceding provisions of the head in question (Sch 11 para 11(8)). Any sums required by the Secretary of State to fulfil a guarantee given under Sch 11 para 11 (as amended) are to be paid out of money provided by Parliament: Sch 11 para 11(9).

The power to give a guarantee under Sch 11 para 11(1)(b) (see head (2) in the text) becomes exercisable in the case of any new scheme if the Secretary of State is of the opinion that it is desirable to give such a guarantee for the purpose of ensuring that the trustees of the scheme are, or will be, able to meet their liabilities to make payments in respect of pension rights under the scheme as those liabilities fall to be met: Sch 11 para 11(6).

8 Ibid Sch 11 para 11(1). The provision made by Sch 11 para 11(1) is subject to the provisions of Sch 11 para 11(2)-(10) (as amended) (as to which see notes 4, 7 supra; and the text and notes 9-22 infra): see Sch 11 para 11(1).

The Secretary of State may make a substitution order in relation to any occupational pension scheme in relation to which a guarantee has been given by him under Sch 11 para 11 (as amended): see the Transport Act 1980 s 52B(1) (as added); and PARA 6 note 4 ante.

9 Railways Act 1993 Sch 11 para 11(3)(a). The text refers to a transfer of pension rights made pursuant to an order under Sch 11 para 4 (as amended) (see PARA 9 ante): see Sch 11 para 11(3)(a).

10 For the meaning of 'participant' see PARA 7 note 5 ante.

11 Railways Act 1993 Sch 11 para 11(3)(b).

12 Ibid Sch 11 para 11(4)(a).

13 For the meaning of 'employment' see PARA 7 note 5 ante.

14 Railways Act 1993 Sch 11 para 11(4)(b)(i). For these purposes, 'relevant employer' means: (1) the British Railways Board; (2) a wholly owned subsidiary of the Board; (3) a publicly owned railway company; (4) the Strategic Rail Authority; or (5) a wholly owned subsidiary of the Authority: s 151(1), Sch 11 para 11(10) (amended by the Transport Act 2000 ss 252, 274, Sch 27 paras 17, 49(1), (5), Sch 31 Pt IV). For the meaning of 'publicly owned railway company' see PARA 7 note 4 ante; for the meaning of 'subsidiary' see PARA 7 note 4 ante; and for the meaning of 'wholly owned subsidiary' see PARA 7 note 4 ante. As to the establishment and abolition of the British Railways Board see PARA 44 post; and as to the establishment and abolition of the Strategic Rail Authority see PARA 46 post.

15 For these purposes, 'deferred pensioner', in the case of any pension scheme, means a person who has pension rights under the scheme but who (so far as relating to those pension rights) is neither a participant in the scheme nor a pensioner under the scheme: Railways Act 1993 Sch 11 para 11(10).

16 For the meaning of 'occupational pension scheme' see PARA 6 note 4 ante.

17 Railways Act 1993 Sch 11 para 11(4)(b)(ii).

18 Ie the conditions set out in *ibid* Sch 11 para 11(4) (see head (i) and head (ii) in the text).

19 *Ibid* Sch 11 para 11(7).

20 For these purposes, 'prescribed' means specified in, or determined in accordance with, an order made by the Secretary of State: *ibid* Sch 11 para 1(1). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5). As to the orders so made see note 22 *infra*.

21 Ie the conditions set out in *ibid* Sch 11 para 11(3) (see head (a) and head (b) in the text).

22 *Ibid* Sch 11 para 11(5). The text refers to the conditions set out in Sch 11 para 11(4) (see head (i) and head (ii) in the text).

The Secretary of State, in exercise of the powers conferred on him by Sch 11 para 11(5), has made the Railways Pensions Guarantee (Prescribed Persons) Order 1994, SI 1994/2150; and the Railways Pensions Guarantee (Prescribed Persons) Order 2007, SI 2007/1595 (both regarding certain transfers made into the 1994 Pensioners' Section of the Railway Pensions Scheme).

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C. RAILWAY UNDERTAKINGS AUTHORISED BY SPECIAL ACT

13. Legislation applying in relation to independent railway undertakings.

The nationalisation of the railway system in 1947 was extensive but not all-embracing¹ so that railway undertakings which were not nationalised remained independent of the nationalised parts of the system². When the Transport Act 1962 reorganised the nationalised transport undertakings, provision was made to define an 'independent railway undertaking'³ as a railway undertaking carried on in Great Britain but not forming part of the undertaking of any of the Boards⁴, being an undertaking the carrying on of which is authorised by, or by an order made under, an Act of Parliament⁵. Subject to certain exceptions⁶, public general legislation passed since 1947 does not apply to an independent railway undertaking and its functions and powers are regulated by its special Act⁷.

¹ As to nationalisation of the railway system see PARA 4 ante.

² Several of the railway undertakings which were not nationalised were light railways (as to which see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1574 et seq).

³ Ie for the purposes of the Transport Act 1962 s 52 (prospectively amended) (independent railway and inland waterway undertakings), which applies to an independent railway undertaking whether or not the undertaking is also engaged in other activities but does not apply in respect of any such other activities: see s 52(5).

⁴ Ie the Boards established under the Transport Act 1962 (see PARA 4 ante) but now abolished in the case of the British Railways Board, whose main functions and responsibilities are shared between the Secretary of State and the Office of Rail Regulation (see PARA 5 ante). The reference to the Boards in the definition of 'independent railway undertaking' given in the Transport Act 1962 s 52(4) includes a reference to Transport for London or to any of its subsidiaries (within the meaning of the Greater London Authority Act 1999: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq): see the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, art 2, Sch 1 Pt 1 para 2(1), (2)(a).

⁵ Transport Act 1962 s 52(4). For these purposes, 'railway' does not include: (1) a light railway laid wholly or mainly along a public carriageway and used wholly or mainly for the carriage of passengers; (2) a railway which, under the statutory provisions relating thereto, is to be treated as forming part of a tramway; (3) a railway laid wholly or mainly over a beach or wholly along a pier; or (4) a railway of the nature of a lift providing communication between the top and bottom of a cliff: s 52(4).

⁶ See eg ibid s 43(1)(b), (2), (3), (5), (6) (as amended) (charges and facilities), as applied by s 52(2), and s 67(1), (3)-(12) (as amended; prospectively repealed) (byelaws), as applied by s 84(3).

⁷ Companies formed for the purpose of carrying on undertakings of a public nature have been (and are from time to time) incorporated by special Act of Parliament: see COMPANIES vol 14 (2009) PARA 1667. Special Acts are outside the scope of this work. However, for recent examples of special Acts creating independent railway undertakings see the Tyneside Metropolitan Railway Act 1973, the Tyne and Wear Passenger Transport Act 1979 and the Heathrow Express Railway Act 1991; and as to the incorporation in special Acts of the provisions of the Railways Clauses Consolidation Act 1845, the Companies Clauses Consolidation Act 1845, the Lands Clauses Consolidation Act 1845 and the Railways Clauses Act 1863 see PARAS 14, 291 post.

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14. Accounts, returns and dividends of railway companies authorised by special Act.

Every company to which the Companies Clauses Consolidation Act 1845 applies¹, must keep full accounts of all money received or expended², publish balance sheets³, appoint auditors⁴ and submit the accounts to those auditors⁵. A railway company authorised by special Act⁶ is not under any obligation to prepare or to submit to their shareholders or auditors statements of accounts or balance sheets more than once a year unless accounts are required for a dividend guaranteed under statutory provisions⁷. The ordinary general meeting need not be held more than once a year and anything required to be done at a general meeting at a specified time may be done at the annual general meeting whenever held⁸.

Every railway company authorised by special Act⁹ must annually prepare accounts and returns in such form and containing such particulars as the Secretary of State¹⁰ from time to time may direct¹¹ and must submit their accounts to their auditors in that form¹². The accounts and returns must be signed by the officer of the company responsible for the correctness of the accounts or returns and, in the case of an incorporated company, by the chairman or deputy chairman of the directors of the company, and must be made up for each year ending 31 December or such other day as the Secretary of State from time to time may fix¹³. Six copies of the accounts must be forwarded to the Secretary of State not later than 60 days after the expiration of the year for which the accounts and returns are made up and, in the case of an incorporated company, a copy must be supplied to every shareholder¹⁴ or debenture holder¹⁵ who applies for a copy¹⁶. If any railway company fails to prepare or forward the accounts or returns as required, the company is liable on summary conviction to a daily fine¹⁷. If any account or return prepared or forwarded is false in any particular to the knowledge of any person who signed the account or return, that person is liable, on conviction on indictment, to a fine of any amount or imprisonment for a term not exceeding one year, or on summary conviction to a fine not exceeding the prescribed sum¹⁸.

A copy of all the accounts must be furnished by the Secretary of State to the Registrar of Companies¹⁹ and must be filed by him²⁰. Any person is entitled to inspect or obtain a certified copy or extract of the accounts on payment of certain charges²¹.

The directors of an incorporated railway company may, if it appears to them that the profits of the company are sufficient, declare and pay an interim dividend for the first half of a year notwithstanding that the accounts are not audited for the half-year, and that a statement of accounts and balance sheet for the half-year are not submitted to the shareholders, and may close their register and books of transfer before the date on which the interim dividend is declared in the same manner and for the same time and subject to the same provisions as they may close their register or books before the date on which their ordinary dividend is declared or before the date of their ordinary meeting²².

1 The Companies Clauses Consolidation Act 1845 was passed in order to comprise in one general Act the provisions relating to the constitution and management of companies which were at that time usually incorporated by way of special Acts of Parliament (as were railway undertakings: see PARA 13 ante): see COMPANIES vol 15 (2009) PARA 1667.

2 See *ibid* s 115; and COMPANIES vol 15 (2009) PARA 1803.

3 See *ibid* s 116; and COMPANIES vol 15 (2009) PARA 1804.

4 See *ibid* s 101; and COMPANIES vol 15 (2009) PARA 1806.

5 See *ibid* s 106; and COMPANIES vol 15 (2009) PARA 1807.

6 For these purposes, 'railway company' means any company or person working a railway under lease or otherwise; and 'railway' means a railway authorised by special Act, where 'special Act' includes any certificate or order having the force of an Act: Railway Companies (Accounts and Returns) Act 1911 s 6(1). As to railways which are managed or worked by a joint committee or other body representing two or more railway companies see s 6(3). The Railway Companies (Accounts and Returns) Act 1911 does not apply to any of the Boards established under the Transport Act 1962 (see s 24(4)); and a person is not a railway company for the purposes of the Railway Companies (Accounts and Returns) Act 1911 by virtue of working a railway authorised by the Channel Tunnel Rail Link Act 1996: see s 20, Sch 9 para 6. As to the British Railways Board (established under the Transport Act 1962 but now abolished) see PARA 13 note 4 ante.

Where any light railway company or other railway company is exempted by virtue of any special Act from the operation of the Regulation of Railways Act 1871 ss 9, 10 (repealed), as respects their railway or any part of their railway, that company will, so far as regards that railway or part of the railway, be exempt from the obligation to prepare, submit, and forward accounts and returns under the provisions of the Railway Companies (Accounts and Returns) Act 1911; and the Secretary of State may exempt any company or authority from that obligation if it is satisfied that the business of a railway company is merely subsidiary to the main business carried on by the company or authority, and that the company or authority is under an obligation to prepare accounts in a form prescribed by the Secretary of State or to present them to Parliament: s 6(2). As to the Secretary of State see PARA 35 post.

7 See *ibid* s 4(1). For these purposes, 'statutory provisions' includes the provisions of any certificate or order having the force of an Act: s 6(1). See *North British Ry Co v Wingate* 1913 SC 1092, Ct of Sess, where it was held that a company was not relieved of its duty of calculating dividend in accordance with the provisions of its private Act on the basis of the profits of each half-year.

8 See the Railway Companies (Accounts and Returns) Act 1911 s 4(1).

9 See note 6 *supra*.

10 See note 6 *supra*.

11 See the Railway Companies (Accounts and Returns) Act 1911 s 1(1) (amended by the Transport Charges etc (Miscellaneous Provisions) Act 1954 s 10(1); the Minister of Aviation Order 1959, SI 1959/1768, arts 3(2), 4(1); the Secretary of State for the Environment Order 1970, 1970/1681, arts 2(1), 6(3); and the Minister of Transport Order 1979, 1979/571, arts 2(1), 3(5)). At the date at which this volume states the law, it seems that no such direction has been given.

12 See the Railway Companies (Accounts and Returns) Act 1911 s 1(1) (as amended: see note 11 *supra*).

13 See *ibid* s 1(2) (amended by the Transport Charges etc (Miscellaneous Provisions) Act 1954 s 10(2)).

14 For these purposes, 'shareholder' means the holder of any share or part of any stock or other capital of a railway company which is not raised by means of borrowing or has not the character of borrowed money: Railway Companies (Accounts and Returns) Act 1911 s 6(1).

15 For these purposes, 'debenture holder' means the holder of any debenture or part of any debenture stock or other capital of a railway company which is raised by means of borrowing or has the character of borrowed money: *ibid* s 6(1).

16 See *ibid* s 1(3).

17 *Ibid* s 1(4) (amended by the Criminal Law Act 1977 s 31(6)). The amount of the fine must not exceed £25 for every day during which the default continues: Railway Companies (Accounts and Returns) Act 1911 s 1(4) (as so amended).

18 *Ibid* s 1(5) (amended by the Criminal Justice Act 1948 s 1(2); the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 367 note 6 post.

19 For these purposes, 'Registrar of Companies' means the officer performing the duty of the registration of companies under the Companies Act 1985: see the Railway Companies (Accounts and Returns) Act 1911 s 6(1) (amended by the Interpretation Act 1978 s 17(2)(a); and the Transport (Northern Ireland) Order 1977, SI 1977/599). As to the Registrar of Companies see COMPANIES vol 14 (2009) PARA 131 et seq.

20 See the Railway Companies (Accounts and Returns) Act 1911 s 2(1) (amended by the Transport Charges etc (Miscellaneous Provisions) Act 1954 s 14(1)(b), Sch 2 Pt III; and the Transport (Northern Ireland) Order 1977, SI 1977/599).

21 See the Railway Companies (Accounts and Returns) Act 1911 s 2(2) (amended by the Decimal Currency Act 1969 s 10(1)).

22 See the Railway Companies (Accounts and Returns) Act 1911 s 4(2). Any statutory provisions affecting the railway company must be read with the modifications necessary to bring them into conformity with this provision: see s 4(3).

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15. Receivers and managers appointed under the Railway Companies Act 1867.

Prior to 1867, the court had no power to appoint a receiver and manager of a railway company¹, with the result that a judgment creditor of a railway company could deliver a writ of fieri facias² against the company, seize all its rolling stock and other goods, and strangle the whole undertaking³. However, the passing of the Railway Companies Act 1867 remedied this situation by protecting the rolling stock and plant⁴ of a railway company⁵ from execution by a judgment creditor⁶ and thus enabling a company to carry on its business as a going concern, for the benefit of both the public and its creditors, who therefore had a better chance of being paid than if the whole undertaking was broken up and sold⁷.

A person⁸ who has recovered a judgment⁹ against a railway company but who is deprived of his right of having the company's property taken in execution¹⁰ is able to obtain the appointment of a receiver and, if necessary, a manager¹¹ of the undertaking of the company¹². The appointment is obtained by petition in the Chancery Division of the High Court¹³.

In making the appointment, the court exercises its discretion, which is not fettered by the existence of any contract between the company and any other party, for the benefit of all creditors¹⁴. A receiver ought not to be appointed where there is no money for him to receive¹⁵.

Where the company's officers are acting fairly, they are appointed managers¹⁶. They then have the same powers of management as before but must exercise them as officers of the court and under the court's directions, not as the company's officers¹⁷.

All money received¹⁸ by a receiver or manager of a railway company must be applied first to making due provision for the working expenses of the railway¹⁹ and other proper outgoings²⁰ in respect of the undertaking²¹. This priority is strictly confined to those working expenses and other proper outgoings²², and a judgment creditor gains no priority by obtaining a receivership order²³. After providing for the working expenses and outgoings, the money received must then be applied and distributed, under the direction of the court, in payment of the company's debts and otherwise according to the rights and priorities of the persons²⁴ interested in that money²⁵.

A receiver of a railway company has no power to get in unpaid calls or capital²⁶, and the right of a judgment creditor to execution against unpaid capital is not affected by the appointment of a receiver²⁷.

As soon as every judgment creditor has been satisfied the court, if it thinks fit, may discharge the receiver or the receiver and manager²⁸.

1 *Gardner v London, Chatham and Dover Rly Co* (1886) 2 Ch App 201.

2 As to writs of fieri facias see CIVIL PROCEDURE vol 12 (2009) PARA 1266.

3 See *Re Eastern and Midlands Rly Co* (1890) 45 ChD 367 at 378, CA, per Kay J.

4 I.e. the engines, tenders, carriages, trucks, machinery, tools, fittings, materials and effects constituting the rolling stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or workshops: Railway Companies Act 1867 s 4 (amended by 38 & 39 Vict c 31 (1875); and the Statute Law Revision Act 1893).

5 For the purposes of the Railway Companies Act 1867, a 'railway company' is a company constituted by Act of Parliament, or by certificate under an Act, for the purpose of constructing, maintaining or working a railway,

either alone or in conjunction with any other purpose: s 3. It is irrelevant whether or not the railway is the principal purpose: *Great Northern Rly Co v Tahourdin* (1883) 13 QBD 320, CA; *Re East and West India Dock Co* (1888) 38 ChD 576, CA. The Transport Act 1962 s 95(1), Sch 12 Pt I (repealed) repealed all the remaining provisions of the Railway Companies Act 1867 except ss 1-5 (as amended), and some doubt may persist as to the exact scope of their application because provision was not made explicitly to exclude the British Railways Board (now abolished: see PARA 5 ante).

6 See *ibid* s 4 (as amended: see note 4 supra). The protection of the Railway Companies Act 1867 only applies once the railway or any part thereof is open for public traffic: see s 4 (as so amended). If in any case where property of a company has been taken in execution a question arises whether or not it is liable to be so taken notwithstanding the provisions of the Railway Companies Act 1867, either party may apply by summons in a summary way to the court out of which the execution issued and such determination is to be final and binding: see s 5.

7 See *Re Eastern and Midlands Rly Co* (1890) 45 ChD 367 at 379, CA; *Re Wrexham, Mold and Connah's Quay Rly Co* [1900] 2 Ch 436 at 439. See also PARA 191 post.

8 For these purposes, 'person' includes corporation: Railway Companies Act 1867 s 3.

9 For these purposes, 'judgment' includes decree, order or rule: *ibid* s 3. The provisions of the Railway Companies Act 1867 also apply to an assignee of a judgment: *Re Freshwater, Yarmouth and Newport Rly Co* (1913) 29 TLR 568. As to the nature of the judgment see PARA 191 post.

10 As to the protection of property from execution see PARA 191 post.

11 The appointment of a manager is necessary if the railway business is being carried on: see *Re Manchester and Milford Rly Co, ex p Cambrian Rly Co* (1880) 14 ChD 645, CA.

12 See the Railway Companies Act 1867 s 4 (as amended: see note 4 supra). If appointed, the receiver or manager must be appointed in respect of the whole undertaking of the company, not merely of a railway which is part of the undertaking: *Re East and West India Dock Co* (1888) 38 ChD 576, CA. A railway company which has never acquired any land or constructed any works is not an undertaking within the Railway Companies Act 1867 s 4 (as amended): *Re Birmingham and Lichfield Junction Rly Co* (1881) 18 ChD 155.

13 Railway Companies Act 1867 ss 3, 4 (s 4 as amended: see note 4 supra). The only evidence required in support of the petition is an affidavit showing that the petitioner is a judgment creditor, that his judgment is unsatisfied, and that the company is a going concern: *Re Manchester and Milford Rly Co, ex p Cambrian Rly Co* (1880) 14 ChD 645, CA.

14 *Re Hull, Barnsley and West Riding Junction Rly and Dock Co* (1887) 57 LT 82. As long as the company is a going concern, debenture holders have no voice in deciding who is to be manager or what his salary is to be: *Re Hull, Barnsley and West Riding Junction Rly and Dock Co supra*.

15 *Re Knott End Railway Act 1898* [1901] 2 Ch 8, CA.

16 *Re Manchester and Milford Rly Co, ex p Cambrian Rly Co* (1880) 14 ChD 645, CA.

17 *Re Eastern and Midlands Rly Co (No 2)* (1891) 66 LT 153; *Whadcoat v Shrophire Rlys Co* (1893) 9 TLR 589.

18 Money received includes the proceeds of sale of rolling stock sold to another company under the provisions of a statutory agreement authorised after the receiver's appointment: *Re Liskeard and Caradon Rly Co* [1903] 2 Ch 681.

19 Working expenses are such as are fairly necessary to enable the railway to be worked efficiently, such as wages and necessary repairs: see *Re Wrexham, Mold and Connah's Quay Rly Co* [1900] 2 Ch 436. Payments for rolling stock bought under a hire purchase agreement are working expenses (*Re Cornwall Minerals Rly Co* (1882) 48 LT 41, CA; *Re Eastern and Midlands Rly Co (No 2)* (1891) 66 LT 153), but a debt for rails supplied before the appointment of a receiver is not (*Re Navan and Kingscourt Rly Co, ex p Price* (1885) 17 LR Ir 398, Ir CA), nor is the cost of promoting a Bill in Parliament for power to substitute electricity for steam in working the railway (*Re Mersey Rly Co* (1895) 64 LJ Ch 623; *affd* [1895] 2 Ch 287, CA), nor is a judgment debt for damages obtained against the company for negligence (*Re Wrexham, Mold and Connah's Quay Rly Co supra*). See also *Re Eastern and Midlands Rly Co* (1890) 45 ChD 367, CA.

20 'Proper outgoings' includes payments which must be made if the railway is to be kept working, such as rates and taxes: *Re Wrexham, Mold and Connah's Quay Rly Co* [1900] 2 Ch 436. Where a contractor was owed money by a company and the court gave permission for him to proceed with an action against the company and for the company to defend the action, the result being a substantial reduction in the sum payable, it was

held that the company's costs of the action were not 'proper outgoings': *Re Wrexham, Mold and Connah's Quay Rly Co* [1900] 1 Ch 261, CA. Even where part of a railway was a separate undertaking with separate capital, it was held that the working expenses and proper outgoings were to be paid before the interest on the separate capital: *Re Eastern and Midlands Rly Co* (1890) 45 ChD 367, CA. See also *Re Cornwall Minerals Rly Co* (1882) 48 LT 41, CA; *Re Eastern and Midlands Rly Co (No 2)* (1891) 66 LT 153; *Re Navan and Kingscourt Rly Co, ex p Price* (1885) 17 LR Ir 398, Ir CA; *Re Mersey Rly Co* (1895) 64 LJ Ch 623; affd [1895] 2 Ch 287, CA.

21 See the Railway Companies Act 1867 s 4 (as amended: see note 4 supra).

22 *Re Wrexham, Mold and Connah's Quay Rly Co* [1900] 2 Ch 436, CA, where it was held that a person who had obtained a judgment for damages for negligence had no priority either as to the damages or the costs of the action.

23 *Re Mersey Rly Co* (1888) 37 ChD 610; *Devas v East and West India Dock Co* (1889) 58 LJ Ch 522. Therefore, where an order for a receiver has been made on the petition of one judgment creditor, a petition by a second judgment creditor should be refused: *Re Mersey Rly Co* supra.

24 As to the meaning of 'person' for these purposes see note 8 supra.

25 See the Railway Companies Act 1867 s 4 (as amended: see note 4 supra). As to the priorities against creditors see *Liskeard and Looe Rly Co v Liskeard and Caradon Rly Co and Foster* (1901) 18 TLR 1.

26 *Re Birmingham and Lichfield Junction Rly Co* (1881) 18 ChD 155; *Re West Lancashire Rly Co* (1890) 63 LT 56.

27 *Re West Lancashire Rly Co* (1890) 63 LT 56, where the proceedings by the judgment creditor were against the receiver in his capacity as a holder of partly paid shares.

28 See the Railway Companies Act 1867 s 4 (as amended: see note 4 supra).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(i) Historical Context/C. RAILWAY UNDERTAKINGS AUTHORISED BY SPECIAL ACT/16. Winding up or dissolution of railway company incorporated by special Act.

16. Winding up or dissolution of railway company incorporated by special Act.

A railway company incorporated by special Act¹ can be wound up under the Insolvency Act 1986 as an unregistered company².

A railway company incorporated by special Act may also be dissolved by special Act³.

¹ As to which see PARA 13 ante.

² See the Insolvency Act 1986 s 220(1) (as amended); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1147.

³ Special Acts are outside the scope of this work. However, see eg the South Wales Transport Act 1959, which provided for the closing of the Oystermouth and Mumbles railways and the dissolution of the Swansea and Mumbles Railways Limited and the Mumbles Railway and Pier Company. In some cases, the special Act incorporating a company provides for the dissolution of a company previously incorporated (either by a special Act or pursuant to the Companies Act 1985 or the Acts which it replaces) and also for the transfer to the new company of the undertaking and assets of the dissolved company: see COMPANIES vol 14 (2009) PARA 1667.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(ii) Legislative Scheme/A. IN GENERAL/17. Introduction to the law relating to railways.

(ii) Legislative Scheme

A. IN GENERAL

17. Introduction to the law relating to railways.

The law relating to railways has its origins in the 19th century, when the concern was to provide for the construction of the emerging railway network and associated works¹. However, the former privately owned railway undertakings were first grouped and nationalised by public Act² and then the nationalised system was privatised under the Railways Act 1993³. This Act provides the basis for the modern industry. The emphasis of the modern law, which is almost entirely statutory in nature, is on the supervision and regulation of the railway industry⁴ and on ensuring that it operates efficiently and economically, safely and securely⁵. The construction of new railways is now authorised by orders made under the Transport and Works Act 1992⁶ but special projects, such as the Channel Tunnel Rail Link and the Crossrail Link, tend to have their own legislative regime, especially with regard to construction and works, with some of the existing railway legislation being extended to apply to them⁷.

Changes have been stimulated also by virtue of the United Kingdom's membership of the European Union: the manner in which railway privatisation was effected allowed for the accounting separation of the railway infrastructure and its control activity from the operation of trains as required by the Council Directive of 29 July 1991 on the development of the Community's Railways⁸; rail access for international transport groupings is now permitted⁹; a common European regulatory framework for safety has been introduced¹⁰; and provision is made for the interoperability of both the trans-European conventional rail system¹¹ and the trans-European high-speed rail system¹².

1 Prior to 1845, railways were constructed pursuant to powers contained in special Act legislation: an authorising special Act would incorporate provisions dealing with eg works and alterations thereto; occupation of land; protection and accommodation of adjacent land; crossings of, and interference with, roads; mines and minerals, etc. After 1845, common-form provisions which are made law by being incorporated in a special Act were contained in public general legislation (ie in some of the 'Clauses Acts', for these purposes, mainly the Railways Clauses Consolidation Act 1845 and the Railways Clauses Act 1863) and usually incorporated into a special Act by reference. As to the special authorisation procedure for the construction etc of a railway see PARA 291 post. A small body of common law grew up regulating the responsibilities and duties of undertakers in the exercise of their statutory powers: see PARA 293 et seq post. Other statutory powers provided for public rights and accommodation works: see PARA 343 et seq post. As to the Clauses Acts see STATUTES vol 44(1) (Reissue) PARA 1229.

2 As to the grouping of undertakings and the nationalisation of the railway system see PARAS 3-4 ante.

3 The basis of the modern law is the Railways Act 1993 (as amended and supplemented by the Transport Act 2000, the Railways and Transport Safety Act 2003 and the Railways Act 2005) and associated secondary legislation: see PARA 5 ante.

4 See PARA 32 et seq post.

5 See PARA 194 et seq post. Offences, some of which are enforceable under health and safety law, are discussed at para 367 et seq post. General health and safety law is, of course, applicable to the railway industry and the Railways Act 2005 transferred certain functions previously conferred on the Health and Safety Commission by or under the Health and Safety at Work etc Act 1974 to the Office of Rail Regulation: see PARA 196 et seq post. The influence of general public health and environmental law is also felt, particularly in relation

to construction and works (as to which see the text and note 6 infra). As to cognate law generally see PARA 20 et seq post.

6 See PARA 302 et seq post. The Transport and Works Act 1992 introduced a system of ministerial orders which replaced the former authorisation procedure (as to which see note 1 supra), although some of the provisions found in the Railway Clauses Consolidation Act 1845 are normally incorporated by reference into such orders: see eg the provisions relating to accommodation works (see PARA 326 et seq post), the repair of roads and other works (see PARAS 343-344 post) and the crossing by a railway of roads, bridges, etc (see PARA 345 et seq post).

7 Exceptionally, powers to construct the new rail link between London and the Channel Tunnel were contained in the Channel Tunnel Rail Link Act 1996 (a hybrid Act promoted by government): see PARA 324 post. This legislative scheme has been adopted for the Crossrail Bill (2007-08), which resembles the Channel Tunnel Rail Link Act 1996 in many respects: see PARA 325 post.

8 Ie EC Council Directive 91/440 (OJ L237, 24.08.91, p 25) (as amended). See also EC Council Directive 95/18 (OJ L143, 27.06.95, p 70) (as amended) on the licensing of railway undertakings; and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) (as amended). As to the implementation of these Directives see PARA 31 et seq post.

9 See the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, regs 5-7; and PARAS 109-110 post.

10 See Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive') (OJ L164, 30.04.2004, p 44); and PARA 30 et seq post.

11 See Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (as amended); and PARA 30 et seq post.

12 See Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (as amended); and PARA 30 et seq post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(ii) Legislative Scheme/B. RAILWAY BYELAWS/18. Provision for the making of byelaws under the Railways Act 2005.

B. RAILWAY BYELAWS

18. Provision for the making of byelaws under the Railways Act 2005.

A railway operator¹ may make byelaws² regulating one or more of the following:

- 39 (1) the use and working of a relevant asset³;
- 40 (2) travel on or by means of a relevant asset⁴;
- 41 (3) the maintenance of order on relevant assets⁵;
- 42 (4) the conduct of persons while on relevant assets⁶.

Those byelaws may include, in particular:

- 43 (a) byelaws with respect to tickets issued for entry on relevant assets or for travel by railway or with respect to evasion of the payment of fares or other charges⁷;
- 44 (b) byelaws with respect to the obstruction of a railway⁸;
- 45 (c) byelaws with respect to any other interference with the working of a railway, with a relevant asset or with the provision of a railway service⁹;
- 46 (d) byelaws prohibiting or restricting smoking in railway carriages and elsewhere¹⁰;
- 47 (e) byelaws for the prevention of nuisance¹¹;
- 48 (f) byelaws with respect to the receipt and delivery of goods¹²; and
- 49 (g) byelaws for regulating the passage of bicycles and other vehicles on footways and other premises controlled by the railway operator in question and intended to be used by those on foot¹³.

Byelaws may provide that a person contravening them is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale¹⁴ or such lower amount as is specified in the byelaws¹⁵.

1 For these purposes, 'railway operator' means an operator of a railway asset who is: (1) authorised to be the operator of that asset by a licence granted under the Railways Act 1993 s 8 (as amended) (as to which see PARA 83 post) (Railways Act 2005 s 46(7)(a) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 3, Sch 1 Pt 1 para 5(a))); (2) exempt by virtue of the Railways Act 1993 s 7 (as amended) (as to which see PARA 92 post) or any other enactment from the requirement to be so authorised (Railways Act 2005 s 46(7)(b)); or (3) authorised to provide train services by a European licence (s 46(7)(c) (added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 3, Sch 1 Pt 1 para 5(b))). For the meaning of 'European licence' see PARA 92 note 2 post; definition applied by the Railways Act 2005 s 58(2). For the meaning of 'licence' see PARA 83 note 6 post; definition applied by s 58(2). For the meaning of 'operator' see PARA 83 note 7 post; definition applied by s 58(2). For the meaning of 'railway asset' see PARA 83 note 7 post; definition applied by s 58(2). As to the publication and proof of byelaws made under the Railways Act 2005 see PARA 19 post.

2 Byelaws which were made by the Strategic Rail Authority under the Transport Act 2000 s 219 (repealed) and are in force immediately before the repeal of s 219 by the Railways Act 2005 (ie 16 October 2005: see the Railways Act 2005 (Commencement No 4) Order 2005, SI 2005/2812, art 2(1), Sch 1) continue to have effect after the coming into force of that repeal as if every reference in those byelaws to that Authority were a reference to the Secretary of State: Railways Act 2005 s 46(4). The Secretary of State may by order revoke or amend any byelaws having effect in accordance with s 46(4) or any byelaws saved by the Transport Act 2000:

Railways Act 2005 s 46(5). For these purposes, 'byelaws saved by the Transport Act 2000' means byelaws which: (1) were made (or have effect as if they were made) under the Transport Act 1962 s 67 (as amended; prospectively repealed) or the Railways Act 1993 s 129 (repealed) (Railways Act 2005 s 46(6)(a)); (2) were continued in force by the Transport Act 2000 s 253, Sch 28 para 5(2) (as amended) (Railways Act 2005 s 46(6)(b)); and (3) are in force immediately before the commencement of s 46 (as amended) (s 46(6)(c)). The day appointed for the commencement of s 46(1)-(2), (3) (for certain purposes), (7)-(8) was 24 July 2005 (see the Railways Act 2005 (Commencement No 2) Order 2005, SI 2005/1909, art 2, Schedule) and the day appointed for the commencement of the Railways Act 2005 s 46(3) (for remaining purposes), (4)-(6) was 16 October 2005 (see the Railways Act 2005 (Commencement No 4) Order 2005, SI 2005/2812, art 2(1), Sch 1). As to the Secretary of State see PARA 35 post; as to the establishment and abolition of the Strategic Rail Authority see PARA 46 post.

As to the validity of byelaws as they had been made under the Transport Act 1962 s 67 (as amended; prospectively repealed) see *Boddington v British Transport Police* [1999] 2 AC 143, [1998] 2 All ER 203, HL; and JUDICIAL REVIEW vol 61 (2010) PARA 609. Transport for London may make byelaws under the Local Government Act 1972 s 236 (as amended) (procedure for byelaws: see LOCAL GOVERNMENT vol 69 (2009) PARAS 556-557) and under the Transport Act 1962 s 67 (as amended; prospectively repealed) and Greater London Authority Act 1999 s 156(8), Sch 11 para 26 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 313).

Every power conferred by the Railways Act 2005 on the Secretary of State to make an order or regulations is a power exercisable by statutory instrument: s 56(1). Where the Railways Act 2005 provides for an order or regulations to be subject to the negative resolution procedure, and a draft of the order or regulations is not required (in accordance with s 56(4) or any other enactment) to have been laid before Parliament and approved by a resolution of each House (or by a resolution of the House of Commons) the statutory instrument containing the order or regulations is to be subject to annulment in pursuance of a relevant resolution: s 56(2). For these purposes, 'relevant resolution' means a resolution of either House of Parliament: s 56(3)(a). As to orders or regulations made by the Scottish Ministers or orders made by the Secretary of State and the Scottish Ministers jointly see s 56(3)(b), (c). Where the Railways Act 2005 specifies that a power to make provision of a particular description by order is subject to the affirmative resolution procedure, no order may be made containing provision of that description (with or without other provision) unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 56(4). Except in relation to the power to make an order under s 60(2) (commencement) (s 56(6)), every power under the Railways Act 2005 of the Secretary of State to make an order or regulations includes power: (1) to make different provision for different cases, including different provision in respect of different areas (s 56(5)(a)); (2) to make provision subject to such exemptions and exceptions as the person exercising the power thinks fit (s 56(5)(b)); and (3) to make such incidental, supplemental, consequential and transitional provision as that person thinks fit (s 56(5)(c)).

3 Ibid s 46(1)(a). For these purposes, 'relevant asset', in relation to a railway operator, means: (1) a railway asset of which he is the operator (s 46(8)(a)); or (2) any rolling stock not falling within head (1) supra of which he has the management for the time being (s 46(8)(b)). For the meaning of 'rolling stock' see PARA 82 note 2 post; definition applied by s 58(2).

4 Ibid s 46(1)(b).

5 Ibid s 46(1)(c).

6 Ibid s 46(1)(d).

7 Ibid s 46(2)(a).

8 Ibid s 46(2)(b). For the meaning of 'railway' see PARA 82 note 2 post; definition applied by s 58(2).

9 Ibid s 46(2)(c). For the meaning of 'railway services' see PARA 82 post; definition applied by s 58(2).

10 Ibid s 46(2)(d). The Health Act 2006 Pt 1 Ch 1 (ss 1-12) makes provision for the prohibition of smoking in certain premises, places and vehicles which are smoke-free by virtue of Pt 1 Ch 1: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 250 et seq.

11 Railways Act 2005 s 46(2)(e).

12 Ibid s 46(2)(f). As to the meaning of 'goods' see PARA 82 note 3 post; definition applied by s 58(2).

13 Ibid s 46(2)(g).

14 As to the standard scale see PARA 370 note 7 post.

15 See the Railways Act 2005 s 46(3), Sch 9 para 2; and PARA 392 post.

UPDATE

18 Provision for the making of byelaws under the Railways Act 2005

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--See *DPP v Inegbu* [2008] EWHC 3242 (Admin), [2009] 1 WLR 2327, [2008] All ER (D) 269 (Nov) (mechanism by which bye-laws could be proved was preserved).

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19. Confirmation and publication of byelaws made under the Railways Act 2005.

Byelaws¹ do not come into force until they have been confirmed by the appropriate national authority².

A railway operator³ who proposes to make byelaws must publish a notice⁴ stating: (1) that he proposes to make byelaws⁵; (2) the manner in which a copy of the proposed byelaws will be open to public inspection⁶; and (3) that any person affected by the proposed byelaws may make representations about them to the appropriate national authority within the period specified in the notice⁷. At the end of the period so specified, the appropriate national authority must forward any representations that have been made to it to the railway operator⁸; and the railway operator must not submit the byelaws for confirmation unless he has considered the representations so forwarded by the appropriate national authority⁹.

The appropriate national authority may either confirm (with or without modifications¹⁰) any byelaws submitted to it for confirmation¹¹ or refuse to confirm them¹². The appropriate national authority may fix the date of the coming into force of any byelaws confirmed by it¹³; or, if the appropriate national authority confirms byelaws without fixing the date on which they come into force, they come into force at the end of the period of 28 days beginning with the day after that on which they are confirmed¹⁴. If the appropriate national authority has confirmed byelaws, then: (a) copies of the byelaws must be printed¹⁵; (b) at least one copy must be kept at the principal offices of the railway operator who made them¹⁶; (c) the railway operator must send one copy to the appropriate national authority¹⁷; and (d) the railway operator must supply one copy (free of charge) to every person who applies for a copy or for more than one copy¹⁸.

The production of a printed copy of byelaws which is endorsed with a certificate stating one or more specified matters¹⁹ and purporting to be signed by an officer of the railway operator by whom the byelaws purport to have been made²⁰ is evidence of what is stated²¹.

1 le byelaws under the Railways Act 2005 s 46 (as amended): see s 46(3), Sch 9 para 1(1). As to the making of byelaws under the Railways Act 2005 see PARA 18 ante.

2 Ibid Sch 9 para 3. For these purposes, 'appropriate national authority', in relation to any byelaws, means, where the relevant assets by reference to which the byelaws are or were made do not include Scottish assets, the Secretary of State: Sch 9 para 1(1). For the meaning of 'relevant asset' see PARA 18 note 3 ante. As to the Secretary of State see PARA 35 post.

3 For the meaning of 'railway operator' see PARA 18 note 1 ante; definition applied by ibid Sch 9 para 1(1).

4 The publication of the notice must be in the manner approved by the appropriate national authority: ibid Sch 9 para 4(2). As to the meaning of 'notice' see PARA 34 note 4 post; definition applied by s 58(2).

5 Ibid Sch 9 para 4(1)(a). The power to make byelaws includes the power to make byelaws amending or revoking byelaws (Sch 9 para 8(1)); and the appropriate national authority may by order revoke byelaws (Sch 9 para 8(2)). At the date at which this volume states the law, no such order had been made. As to the making of orders under the Railways Act 2005 generally see PARA 18 note 2 ante.

6 Ibid Sch 9 para 4(1)(b).

7 Ibid Sch 9 para 4(1)(c). The period specified for these purposes must be the period of 28 days beginning with the day after that on which the railway operator's notice is published, or a longer period: Sch 9 para 4(3).

8 Ibid Sch 9 para 4(4).

9 Ibid Sch 9 para 4(5).

10 As to the meaning of 'modification' see PARA 33 note 46 post; definition applied by ibid s 58(2).

11 Ibid Sch 9 para 5(1)(a).

12 Ibid Sch 9 para 5(1)(b).

13 Ibid Sch 9 para 5(2).

14 Ibid Sch 9 para 5(3).

15 Ibid Sch 9 para 6(a).

16 Ibid Sch 9 para 6(b).

17 Ibid Sch 9 para 6(c).

18 Ibid Sch 9 para 6(d).

19 Ibid Sch 9 para 7(1)(a). The matters so specified are: (1) that the byelaws were made by the railway operator in question (Sch 9 para 7(2)(a)); (2) that the copy is a true copy of the byelaws (Sch 9 para 7(2)(b)); (3) that the byelaws were confirmed by the appropriate national authority on the date specified in the certificate (Sch 9 para 7(2)(c)); and (4) the date of the coming into force of the byelaws (Sch 9 para 7(2)(d)).

20 Ibid Sch 9 para 7(1)(b).

21 Ibid Sch 9 para 7(1).

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C. COGNATE LAW

20. Application of statutory provisions governing the development of land.

In the absence of specific statutory authority¹, the statutory provisions governing the development of land generally² apply to the statutory railway undertakers³. However, in respect of the development of operational land⁴, special provisions apply⁵, and certain developments of operational land required in connection with the carrying out of statutory undertakings are expressly permitted and may be carried out without planning permission⁶.

A number of European Directives which are concerned with the environment have an overriding impact on the development of land⁷.

1 Eg authority conferred by an authorising provision: see PARAS 291 et seq, 302 et seq post.

2 As to the planning system in England and Wales and the legislation that regulates it see generally TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 1.

3 For the purposes of the Town and Country Planning Act 1990, 'statutory undertakers' means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator (within the meaning of the Airports Act 1986 Pt V (ss 57-62) (as amended): see AIR LAW vol 2 (2008) PARA 189); see the Town and Country Planning Act 1990 s 262(1); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1009. As to duties imposed on statutory undertakers regarding litter and abandoned trolleys (including luggage trolleys) see the Environmental Protection Act 1990 Pt IV (ss 86-99) (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 721 et seq.

4 In the Town and Country Planning Act 1990, 'operational land' means, in relation to statutory undertakers, land which is used for the purpose of carrying on their undertaking and land in which an interest is held for that purpose: see s 263(1); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1010. This definition is subject to s 263(2)-(4) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1010) and to s 264 (as amended) (cases in which land is to be treated as not being operational land: see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1011).

5 See *ibid* ss 262-283 (as amended); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1009 et seq.

6 See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3, Sch 2 Pt 17 (development by statutory undertakers) Class A (Railway or Light Railway Undertakings); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARAS 333-334.

7 See especially Council Directive 85/337/EEC of 27 June 1985 (OJ L175, 05.07.85, p 40) on the assessment of the effects of certain public and private projects on the environment (as amended) and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L206, 22.07.92, p 7) (as amended), which are considered in the discussion of railway works: see PARA 319 et seq post. See generally TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 10.

UPDATE

20-21 Application of statutory provisions governing the development of land, Protection available to railway undertakings under highway improvement legislation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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21. Protection available to railway undertakings under highway improvement legislation.

Numerous provisions in the legislation relating to the improvement of highways¹ make express provision for the protection of railway undertakings, in particular in relation to the removal of walls and other erections obstructing the view at corners², the construction of cattle-grids on highways over tunnels³ and the power to order the reconstruction, improvement and maintenance of bridges⁴. In addition, under the highways legislation certain railways are not chargeable with expenses in relation to frontages under the private street works code⁵.

1 See the Highways Act 1980 Pt V (ss 62-105) (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 484 et seq.

2 See ibid s 79(15)(b); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 503.

3 See ibid s 90(1)(c); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 518.

4 See ibid ss 93-95, Sch 11 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 864-874.

5 See ibid s 216; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 169.

UPDATE

20-21 Application of statutory provisions governing the development of land, Protection available to railway undertakings under highway improvement legislation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

21 Protection available to railway undertakings under highway improvement legislation

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(ii) Legislative Scheme/C. COGNATE LAW/22. Protection available to transport authorities under the New Roads and Street Works Act 1991.

22. Protection available to transport authorities under the New Roads and Street Works Act 1991.

Under the New Roads and Street Works Act 1991¹, transport authorities² are entitled to special protection³.

1 le under the New Roads and Street Works Act 1991 Pt III (ss 48-106) (as amended) which sets out the provisions regulating the carrying out of street works by undertakers acting in pursuance of statutory powers: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 406-483.

2 For the purposes of ibid Pt III (as amended), 'transport authority' means the authority, body or person having the control or management of a transport undertaking; and 'transport undertaking' means a railway, tramway, dock, harbour, pier, canal or inland navigation undertaking of which the activities, or some of the activities, are carried on under statutory authority: s 91(1).

3 See ibid Pt III (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 406-483.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(ii) Legislative Scheme/C. COGNATE LAW/23. Application to railway companies of controls on placing overground wires in London.

23. Application to railway companies of controls on placing overground wires in London.

In London, the statutory control on the placing of wires over streets is in general excluded in relation to wires erected, placed or maintained by a railway company over railways, bridges or land used for railway purposes¹.

¹ See the London Overground Wires, etc Act 1933 s 17; and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1274.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(ii) Legislative Scheme/C. COGNATE LAW/24. Powers and protection available to railway companies under the Public Health Act 1936.

24. Powers and protection available to railway companies under the Public Health Act 1936.

On giving reasonable notice to the authority concerned, any railway company may take up, divert or alter the level of any sewers, drains, culverts or pipes vested in a local authority which pass under, or interfere with, the railway or which interfere with the improvement or alteration of the railway¹. However, the work must be done at the expense of the railway undertakers concerned and equally effectual sewers, drains, culverts or pipes must be substituted which will entail no additional expense on the local authority².

Subject to the power of a local authority to open and break up streets and bridges for the purpose of constructing, laying and maintaining sewers, drains and pipes³, nothing in the Public Health Act 1936 authorises an authority, without the consent of the railway undertakers concerned, to execute any works along, across or under any railway of the undertakers⁴. However, consent must not be unreasonably withheld⁵ and, if any question arises as to whether consent is unreasonably withheld, either party may require arbitration⁶.

1 See the Public Health Act 1936 s 330 (repealed in relation to any sewers, drains, culverts or pipes vested in a sewerage undertaker by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 2(3)).

2 See the Public Health Act 1936 s 330 (repealed for certain purposes: see note 1 supra).

3 See *ibid* s 333(4).

4 See *ibid* s 333(1).

5 See *ibid* s 333(1) proviso.

6 See *ibid* s 333(1) proviso, (2).

UPDATE

24-26 Powers and protection available to railway companies under the Public Health Act 1936 ... Application of health and safety at work legislation to railways

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(ii) Legislative Scheme/C. COGNATE LAW/25. Application of retailing and licensing legislation to railway stations and railway vehicles.

25. Application of retailing and licensing legislation to railway stations and railway vehicles.

The general prohibition on large shops¹ opening on Sundays² for the serving of retail customers does not apply to any shop in a railway station³.

For the purposes of the Licensing Act 2003⁴, an activity is not a licensable activity⁵ if it is carried on aboard a railway vehicle⁶ engaged on a journey⁷.

1 For the meaning of 'large shop' see TRADE AND INDUSTRY vol 97 (2010) PARA 908.

2 Ie except in relation to the opening of a large shop during any continuous period of six hours on a Sunday (but not where the Sunday is Easter Day or Christmas Day) beginning no earlier than ten in the morning and ending no later than six in the evening: see the Sunday Trading Act 1994 s 1(1), Sch 1 para 2(3)-(5) (Sch 1 para 2(3) substituted by the Regulatory Reform (Sunday Trading) Order 2004, SI 2004/470, art 2(1), (b); the Sunday Trading Act 1994 Sch 1 para 2(4) amended, and Sch 1 para 2(5) added, by the Christmas Day (Trading) Act 2004 s 4(1), (2)).

3 See the Sunday Trading Act 1994 Sch 1 para 2(1), (2)(a), 3(1)(f); and TRADE AND INDUSTRY vol 97 (2010) PARA 908 et seq.

The Sunday Trading Act 1994 Sch 1 para 2(1) does not apply to any large shop situated in that part of the terminal area of the tunnel system located at the portals of the tunnels in the vicinity of Cheriton, Folkestone, which is within the area shown coloured blue on the deposited plan: Channel Tunnel (Sunday Trading Act 1994) (Disapplication) Order 1994, SI 1994/3286, art 3. For the meaning of 'deposited plan' see art 2. As to the Channel Tunnel generally see PARA 324 post.

4 As to the Licensing Act 2003 see LICENSING AND GAMBLING vol 67 (2008) PARA 26 et seq.

5 As to licensable activities see LICENSING AND GAMBLING vol 67 (2008) PARA 28.

6 As to the meaning of 'railway vehicle' see PARA 82 note 2 post; definition applied by the Licensing Act 2003 s 173(6).

7 See ibid s 173(1); and LICENSING AND GAMBLING vol 67 (2008) PARA 28. For these purposes, the period during which a railway vehicle is engaged on a journey includes: (1) any period ending with its departure when preparations are being made for the journey; and (2) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it): see s 173(2).

UPDATE

24-26 Powers and protection available to railway companies under the Public Health Act 1936 ... Application of health and safety at work legislation to railways

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

25 Application of retailing and licensing legislation to railway stations and railway vehicles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(ii) Legislative Scheme/C. COGNATE LAW/26. Application of health and safety at work legislation to railways.

26. Application of health and safety at work legislation to railways.

Safety legislation applicable to railways previously found in the Offices, Shops and Railway Premises Act 1963¹ has been replaced by the extension of Part I of the Health and Safety at Work etc Act 1974² to have effect in relation to certain specified provisions of railway legislation for the purpose of securing the proper construction and safe operation of certain transport systems and of any locomotives, rolling stock or other vehicles used on those systems and protecting the public (whether passengers or not) from personal injury and other risks arising from the construction and operation of those systems³.

For the purposes of the Factories Act 1961⁴, 'factory'⁵ includes any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking⁶, and any premises in which articles are made or prepared incidentally to the carrying on of building operations or works of engineering construction, not being premises in which such operations or works are being carried on⁷. Any line or siding, not being part of a railway or tramway which is used in connection with and for the purposes of a factory, is deemed to be part of the factory and, if used in connection with more than one factory belonging to different occupiers, it is deemed to be a separate factory⁸.

Provision was made in the Channel Tunnel Act 1987 for the construction and operation of the Channel Tunnel to be subject to supervision by an Intergovernmental Commission and a Safety Authority⁹.

1 See the Offices, Shops and Railway Premises Act 1963 s 1 (repealed).

2 In the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

3 See the Railways Act 1993 s 117(2); the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended); the Railway Safety Regulations 1999, SI 1999/2244 (as amended); the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended); the Construction (Design and Management) Regulations 2007, SI 2007/320; and PARA 194 et seq post. As to railway legislation relating to accidents see PARA 267 et seq post.

Responsibility for the regulation of health and safety on the railways was transferred from the Health and Safety Commission (HSC) and Health and Safety Executive (HSE) to the Office of Rail Regulation (ORR) on 1 April 2006: see PARA 195 post.

4 The provisions of the Factories Act 1961 are dealt with fully in HEALTH AND SAFETY AT WORK. The Factories Act 1961, the Offices, Shops and Railway Premises Act 1963 (as to which see the text and note 1 supra) and the regulations, orders and other instruments in force under those Acts are being progressively replaced by a system of regulations and approved codes of practice under the Health and Safety at Work etc Act 1974 Pt I (as amended) which are designed to maintain or improve the standards of health, safety and welfare established by or under the Factories Act 1961: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 et seq.

5 As to the general meaning of 'factory' and the special classes of premises included in the meaning see the Factories Act 1961 s 175(1), (2) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318 et seq.

6 See *ibid* s 175(2)(f); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 319. Premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out are not deemed to be a factory by reason only of this provision unless they are premises used for the purposes of a railway undertaking where running repairs to locomotives are carried out: see s 175(10).

7 See *ibid* s 175(2)(m); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 319.

8 See *ibid* s 175(3); and see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 321.

9 See the Channel Tunnel Act 1987 ss 17, 18; and PARA 324 post.

UPDATE

24-26 Powers and protection available to railway companies under the Public Health Act 1936 ... Application of health and safety at work legislation to railways

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/ (iii) International Conventions/27. Convention concerning International Carriage by Rail.

(iii) International Conventions

27. Convention concerning International Carriage by Rail.

The Convention concerning International Carriage by Rail (the 'COTIF Convention')¹ was given the force of law by the International Transport Conventions Act 1983². A new version of the COTIF Convention was agreed in 1999³ and the Secretary of State⁴ may make regulations for the purpose of giving effect to the modified COTIF Convention⁵. Such regulations⁶ may:

- 50 (1) make provision enabling a right or duty arising under the Convention to be enforced⁷;
- 51 (2) deal with any matter arising out of or related to the Convention⁸;
- 52 (3) supplement or amplify a provision of the Convention⁹;
- 53 (4) amend an enactment¹⁰;
- 54 (5) apply, disapply or modify the effect of an enactment¹¹;
- 55 (6) confer jurisdiction on a court¹²;
- 56 (7) confer a function (which may include a discretionary function) on the Secretary of State or a person appointed in accordance with the regulations¹³;
- 57 (8) impose a duty to co-operate with a person exercising a function under the Convention or the regulations¹⁴;
- 58 (9) enable a fee to be charged in connection with an inspection or the exercise of another function under the Convention or the regulations¹⁵;
- 59 (10) require a person to provide information to the Secretary of State or another person¹⁶;
- 60 (11) make provision about the disclosure of information¹⁷;
- 61 (12) make provision about the admission of railway vehicles or other railway material to international traffic¹⁸, which may include provision: (a) which concerns the movement or treatment of vehicles or other material following admission¹⁹; (b) which concerns the movement or treatment of passengers following admission²⁰;
- 62 (13) make provision which applies generally or only in specific circumstances²¹;
- 63 (14) make different provision for different circumstances²²;
- 64 (15) include consequential provision (which may include provision amending or repealing an enactment)²³;
- 65 (16) include transitional, supplemental or incidental provision²⁴.

Such regulations may also:

- 66 (i) make provision about changes to the Convention in accordance with its provisions²⁵;
- 67 (ii) specify conditions which must be satisfied before a person may exercise a right under the Convention or do something to which the Convention applies²⁶;
- 68 (iii) provide a criminal or other sanction in connection with a duty arising under the Convention or the regulations²⁷;
- 69 (iv) make provision about the enforcement of judgments²⁸; and
- 70 (v) make provision for the conversion of special drawing rights into sterling²⁹.

Regulations so made³⁰ bind the Crown except in so far as they provide to the contrary³¹.

Provision has been made by the European Parliament and Council to build on the system of international law contained in the modified COTIF Convention but extends the protection thereby afforded to include passengers on a domestic rail passenger service as well as international passengers³².

1 Ie the Convention Relative aux Transports Internationaux Ferroviaires (COTIF): see the Convention concerning International Carriage by Rail (Berne, 9 May 1980; Cm 41); and CARRIAGE AND CARRIERS vol 7 (2008) PARA 683 et seq.

2 See the International Transport Conventions Act 1983 ss 1-8, Sch 1 (repealed).

3 Ie by means of a modifying Protocol (Vilnius, 3 June 1999; Cm 4873): see CARRIAGE AND CARRIERS vol 7 (2008) PARA 683.

4 As to the Secretary of State see PARA 35 post.

5 Railways and Transport Safety Act 2003 s 103(1). The text refers to the Convention concerning International Carriage by Rail (Berne, 9 May 1980; Cm 41) as set out in the Annex to the modifying Protocol (Vilnius, 3 June 1999; Cm 4873) (as to which see the text and notes 1-3 supra): see the Railways and Transport Safety Act 2003 s 103(1). The Railways and Transport Safety Act 2003 s 103 extends to the whole of the United Kingdom: s 103(6). For the meaning of 'United Kingdom' see PARA 31 note 2 post.

Regulations made under s 103 must be made by statutory instrument (s 103(4)); and regulations made under or by virtue of s 103 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament (s 103(5)). The Secretary of State, in exercise of the powers conferred upon him by s 103 and by s 103(2), Sch 6 paras 2(a)-(f), (o), (p), 3-4, 7-9 (see heads (1) to (6), (15), (16), (i), (iii) to (v) in the text) has made the Railways (Convention on International Carriage by Rail) Regulations 2005, SI 2005/2092 (see CARRIAGE AND CARRIERS vol 7 (2008) PARA 683 et seq).

6 Ie regulations which are made in connection with the Convention specified in *ibid* s 103(1) (see the text and notes 3-5 supra), and under s 103(1) or the European Communities Act 1972 s 2 (implementation of Community obligations): Railways and Transport Safety Act 2003 Sch 6 para 1(1).

7 *Ibid* Sch 6 para 2(a).

8 *Ibid* Sch 6 para 2(b).

9 *Ibid* Sch 6 para 2(c).

10 *Ibid* Sch 6 para 2(d).

11 *Ibid* Sch 6 para 2(e).

12 *Ibid* Sch 6 para 2(f).

13 *Ibid* Sch 6 para 2(g).

14 *Ibid* Sch 6 para 2(h).

15 *Ibid* Sch 6 para 2(i).

16 *Ibid* Sch 6 para 2(j).

17 *Ibid* Sch 6 para 2(k).

18 *Ibid* Sch 6 para 2(l).

19 *Ibid* Sch 6 para 2(l)(i).

20 *Ibid* Sch 6 para 2(l)(ii).

21 *Ibid* Sch 6 para 2(m).

22 *Ibid* Sch 6 para 2(n).

23 *Ibid* Sch 6 para 2(o).

24 Ibid Sch 6 para 2(p).

25 See ibid Sch 6 paras 3-4.

26 See ibid Sch 6 para 5.

27 See ibid Sch 6 paras 6-7.

28 See ibid Sch 6 para 8.

29 See ibid Sch 6 para 9.

30 Ie under or by virtue of ibid s 103 (see the text and notes 3-5 supra): see s 103(3).

31 Ibid s 103(3).

32 See the Regulation (EC) 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L315, 03.12.2007, p 14); and PARA 28 post. For these purposes, 'domestic rail passenger service' means a rail passenger service which does not cross a border of a member state: see art 3(11).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(iv) European Union Law/A. REGULATIONS AFFECTING RAILWAYS/28. Regulations governing transport by rail, etc.

(iv) European Union Law

A. REGULATIONS AFFECTING RAILWAYS

28. Regulations governing transport by rail, etc.

Pursuant to the EC Treaty provisions which govern transport by rail¹, the following Regulations have been made:

- 71 (1) Regulation of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway²;
- 72 (2) Regulation of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway³;
- 73 (3) Regulation of the Council of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings⁴;
- 74 (4) Regulation of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway⁵;
- 75 (5) Regulation of the Council of 4 June 1970 introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway⁶;
- 76 (6) Council Regulation of 12 December 1977 on the measures necessary to achieve comparability between the accounting systems and annual accounts of railway undertakings⁷;
- 77 (7) Regulation of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (the 'Agency Regulation')⁸;
- 78 (8) Commission Regulation of 23 December 2005 concerning the technical specification for interoperability relating to the telematic applications for freight subsystem of the trans-European conventional rail system⁹; and
- 79 (9) Regulation of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations¹⁰.

The following Regulation, also made under the EC Treaty¹¹, has a bearing on related matters: Regulation of the European Parliament and of the Council of 16 December 2002 on rail transport statistics¹².

1 I.e. the Treaty Establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') Pt 3 Title V (arts 70-81) (arts 70-81 formerly arts 74-84; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ); see PARA 2 ante. See also the text and notes 11-12 infra, citing a Regulation which has a bearing on related matters but whose legal basis lies elsewhere.

2 I.e. Regulation (EEC) 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L175, 23.07.1968, p 1 (S Edn 1968 (I) p 302)) (amended by Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L1, 04.01.2003, p 1)). Regulation (EEC) 1017/68 (OJ L175, 23.07.1968, p 1 (S Edn 1968 (I) p 302)) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

3 le Regulation (EEC) 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L156, 28.06.1969, p 1 (S Edn 1952-1972 p 33)) (amended by Council Regulation (EEC) 3572/90 of 4 December 1990 (OJ L353, 17.12.1990, p 12); and Council Regulation (EEC) 1893/91 of 20 June 1991 (OJ L169, 29.06.1991, p 1)). Regulation (EEC) 1191/69 (OJ L156, 28.06.1969, p 1 (S Edn 1952-1972 p 33)) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante). As to the competent authorities designated for the purposes of the Regulation mentioned in head (2) in the text see PARA 29 post.

4 le Regulation (EEC) 1192/69 of the Council of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings (OJ L156, 28.06.1969, p 8 (S Edn 1969(I) p 283)) (amended by Council Regulation (EEC) 3572/90 of 4 December 1990 (OJ L353, 17.12.1990, p 12)). Regulation (EEC) 1192/69 (OJ L156, 28.06.1969, p 8 (S Edn 1969(I) p 283)) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante). As to the competent authorities designated for the purposes of the Regulation mentioned in head (3) in the text see PARA 29 post.

5 le Regulation (EEC) 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (OJ L130, 15.06.1970, p 1 (S Edn 1970(II) p 360)) (amended by Regulation (EEC) 1473/75 of the Council of 20 May 1975 (OJ L152, 12.06.1975, p 1); Council Regulation (EEC) 1658/82 of 10 June 1982 (OJ L184, 29.06.1982, p 1); Council Regulation (EEC) 1100/89 of 27 April 1989 (OJ L116, 28.04.1989, p 24); Council Regulation (EEC) 3578/92 of 7 December 1992 (OJ L364, 12.12.1992, p 11); Council Regulation (EC) 2255/96 of 19 November 1996 (OJ L304, 27.11.1996, p 3); and Council Regulation (EC) 543/97 of 17 March 1997 (OJ L84, 26.03.1997, p 6)). Regulation (EEC) 1107/70 (OJ L130, 15.06.1970, p 1 (S Edn 1970(II) p 360)) (as amended) was made in particular pursuant to EC Treaty arts 71, 73 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

6 le Regulation (EEC) 1108/70 of the Council of 4 June 1970 introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway (OJ L130, 15.06.1970, p 4 (S Edn 1970(II) p 363)) (amended by Council Regulation (EEC) 1384/79 of 25 June 1979 (OJ L167, 05.07.1979, p 1)). Regulation (EEC) 1108/70 (OJ L130, 15.06.1970, p 4 (S Edn 1970(II) p 363)) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante). See also Commission Regulation (EC) 851/2006 of 9 June 2006 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) 1108/70 (OJ L158, 10.06.2006, p 3).

7 le Council Regulation (EEC) 2830/77 of 12 December 1977 on the measures necessary to achieve comparability between the accounting systems and annual accounts of railway undertakings (OJ L334, 24.12.1977, p 13) (amended by Council Regulation (EEC) 3572/90 of 4 December 1990 (OJ L353, 17.12.1990, p 12)). Council Regulation (EEC) 2830/77 (OJ L334, 24.12.1977, p 13) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

8 le Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency ('Agency Regulation') (OJ L164, 30.04.2004, p 1). Regulation (EC) 881/2004 (OJ L164, 30.04.2004, p 1) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

9 Commission Regulation (EC) 62/2006 of 23 December 2005 concerning the technical specification for interoperability relating to the telematic applications for freight subsystem of the trans-European conventional rail system (OJ L13, 18.01.2006, p 1). As to the legal basis for Commission Regulation (EC) 62/2006 (OJ L13, 18.01.2006, p 1) see Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1); and PARA 30 post.

10 Regulation (EC) 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L315, 03.12.2007, p 14). This regulation builds on the existing system of international law contained in the Convention Relative aux Transports Internationaux Ferroviaires (COTIF) (see the Convention concerning International Carriage by Rail (Berne, 9 May 1980; Cm 41); and PARA 27 ante) but extends the protection thereby afforded to include passengers on a domestic rail passenger service as well as international passengers: see Regulation (EC) 1371/2007 on rail passengers' rights and obligations (OJ L315, 03.12.2007, p 14) Recital (6). For these purposes, 'domestic rail passenger service' means a rail passenger service which does not cross a border of a Member State: see art 3(11).

11 le but not pursuant to the EC Treaty provisions which govern transport by rail specifically (as to which see note 1 supra).

12 le Regulation (EC) 91/2003 of the European Parliament and of the Council of 16 December 2002 on rail transport statistics (OJ L14, 21.01.2003, p 1) (amended by Commission Regulation (EC) 1192/2003 of 3 July 2003 (OJ L167, 04.07.2003, p 13)). Regulation (EC) 91/2003 (OJ L14, 21.01.2003, p 1) (as amended) was made in particular pursuant to EC Treaty art 285 (formerly art 213a) (as renumbered: see note 1 supra) (measures for

the production of statistics). See also Commission Regulation (EC) 332/2007 of 27 March 2007 on the technical arrangements for the transmission of railway transport statistics (OJ L88, 29.03.2007, p 16).

UPDATE

28 Regulations governing transport by rail, etc

NOTE 3--EEC Council Regulation 1191/69 repealed and replaced by European Parliament and EC Council Regulation 1370/2007 (OJ L315, 3.12.07, p 1) on public passenger transport services by rail and by road; note that the old regulation will continue to apply to freight transport services until 2 December 2012: art 10.

NOTE 5--EEC Council Regulation 1107/70 repealed and replaced by Regulation 1370/2007 (see NOTE 3).

NOTE 8--European Parliament and EC Council Regulation 881/2004 substantially amended by European Parliament and EC Council Regulation 1335/2008 (OJ L354, 31.12.2008 p 51).

NOTE 10--Domestic rail passenger services in Great Britain are generally exempt, until 4 December 2014, from provisions of the EC Council and European Parliament Regulation 1371/2007: Rail Passengers' Rights and Obligations (Exemptions) Regulations 2009, SI 2009/2970.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(iv) European Union Law/A. REGULATIONS AFFECTING RAILWAYS/29. Competent authorities for the purposes of the public service and financial status regulations.

29. Competent authorities for the purposes of the public service and financial status regulations.

In relation to the railways financial status regulations¹, the Secretary of State² is the competent authority of Great Britain³.

For the purposes of the public service obligations regulations⁴:

- 80 (1) the Secretary of State and the Welsh Ministers⁵ are each the competent authority of Great Britain, in relation to persons who operate services for the carriage of goods by railway⁶; and
- 81 (2) the Secretary of State⁷, the Welsh Ministers⁸, every Passenger Transport Executive⁹, every non-metropolitan county or district council in England or in Wales¹⁰ and every London borough council and the Common Council of the City of London¹¹, are each the competent authority of Great Britain in relation to passenger service operators¹².

The Secretary of State may, as competent authority by virtue of head (2) above, give directions¹³ to any passenger service operator imposing on the operator obligations with respect to the provision or operation of railway passenger services¹⁴. It falls to the Secretary of State to make any payments of compensation which are required to be made to a passenger service operator by any provision of the public service obligations regulations in respect of any obligations imposed on that operator by such directions¹⁵; and the Secretary of State may, subject to and in accordance with the provisions of those regulations, determine the manner of calculating, and the conditions applicable to, those payments¹⁶. Without prejudice to any right which the Secretary of State may have under the Railways Act 1993 to bring civil proceedings in respect of any contravention or apprehended contravention of any such directions¹⁷, the obligations imposed by any such directions are not to give rise to any form of duty or liability enforceable against a passenger service operator by proceedings before any court to which the passenger service operator would not otherwise be subject¹⁸.

1 The Regulation (EEC) 1192/69 of the Council of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings (OJ L156, 28.06.1969, p 8 (S Edn 1969(I) p 283)) (amended by Council Regulation (EEC) 3572/90 of 4 December 1990 (OJ L353, 17.12.1990, p 12)) (as to which see PARA 28 ante): see the Railways Act 1993 s 136(11).

2 As to the Secretary of State see PARA 35 post.

3 Railways Act 1993 s 136(1).

In any Act, unless the contrary intention appears, 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly: Interpretation Act 1978 Sch 1. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse: see LOCAL GOVERNMENT vol 69 (2009) PARA 90); Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9). As to local government areas see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to boundary changes see LOCAL

GOVERNMENT vol 69 (2009) PARA 56 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to Scotland see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 51 et seq.

4 le Regulation (EEC) 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L156, 28.06.1969, p 1 (S Edn 1952-1972 p 33)) (amended by Council Regulation (EEC) 3572/90 of 4 December 1990 (OJ L353, 17.12.1990, p 12); and Council Regulation (EEC) 1893/91 of 20 June 1991 (OJ L169, 29.06.1991, p 1)) (as to which see PARA 28 ante): see the Railways Act 1993 s 136(11).

5 As to the Welsh Ministers see PARA 35 post.

6 Railways Act 1993 s 136(2) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 14(2)). For these purposes, the Welsh Ministers are the competent authority only to the extent specified, ie only in relation to services for the carriage of goods by railway which are operated within Wales: Railways Act 1993 s 136(2), (2A) (s 136(2) as so amended; s 136(2A) added by the Railways Act 2005 Sch 11 paras 1, 14(3)). For the meaning of 'operating services for the carriage of goods by railway' see PARA 82 note 3 post; definition applied by the Railways Act 1993 s 136(12). As to the meaning of 'goods' see PARA 82 note 3 post; definition applied by s 136(12).

7 Ibid s 136(3)(a).

8 Ibid s 136(3)(ab) (added by the Railways Act 2005 Sch 11 paras 1, 14(4)). For these purposes, the Welsh Ministers are the competent authority only to the extent specified, ie only in relation to services for the carriage of passengers by railway which are Welsh services within the meaning of the Railways Act 2005 (as to which see PARA 40 note 2 post) or are provided under a franchise agreement to which the Assembly is a party: Railways Act 1993 s 136(3)(ab), (3A) (s 136(3)(ab) as so added; s 136(3A) added by the Railways Act 2005 Sch 11 paras 1, 14(5)). For the meaning of 'franchise agreement' see PARA 130 note 4 post; definition applied by the Railways Act 1993 s 136(12). For the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 post; definition applied by s 136(12).

9 Ibid s 136(3)(c). For these purposes, every Passenger Transport Executive is the competent authority only to the extent specified, ie only in relation to those railway passenger services which the Executive provides, or secures are provided, in exercise of its powers under the Transport Act 1968 s 10(1) (as amended) (as to which see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 249) or the Railways Act 2005 s 13 (as to which see PARA 64 post): Railways Act 1993 s 136(3)(c), (4) (s 136(4) amended by the Railways Act 2005 Sch 11 paras 1, 14(6)). For the meaning of 'railway passenger service' see PARA 36 note 2 post; definition applied by the Railways Act 1993 s 136(12). As to Passenger Transport Executives see PARA 63 post.

10 Ibid s 136(3)(d)(i). For these purposes, a council falling within s 136(3)(d)(i) is the competent authority only in relation to those railway passenger services whose provision the council secures under the Transport Act 1985 s 63 (as amended) (functions of local councils with respect to passenger transport in areas other than passenger transport areas: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1252): Railways Act 1993 s 136(5)(a). As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

11 Ibid s 136(3)(d)(ii). For these purposes, a council falling within s 136(3)(d)(ii) is the competent authority only in relation to those railway passenger services in respect of which the council enters into and carries out agreements under the Greater London Authority Act 1999 s 177 (as amended) (provision of extra transport services in London: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 300): Railways Act 1993 s 136(5)(b) (amended by the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, art 2, Sch 1 Pt 1 para 19). As to London boroughs and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

12 Railways Act 1993 s 136(3). For the meaning of 'passenger service operator' see PARA 33 note 15 post; definition applied by s 136(12).

13 It is the duty of any person to whom a direction is given under the Railways Act 1993 to comply with and give effect to that direction: s 144(1) (amended by the Transport Act 2000 s 274, Sch 31 Pt IV; and the Railways Act 2005 s 59(6), Sch 13 Pt 1). Any direction so given must be in writing (Railways Act 1993 s 144(4)); and any power conferred by the Railways Act 1993 to give a direction must, unless the context otherwise requires, include power to vary or revoke the direction (s 144(3)). Without prejudice to any right which any person may have to bring civil proceedings in respect of any contravention or apprehended contravention of any direction given under the Railways Act 1993, compliance with any such direction is enforceable by civil proceedings, by the person by whom the direction was given, for an injunction or for any other appropriate relief: s 144(2). For these purposes, 'contravention', in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it; and cognate expressions must be construed accordingly: s 151(1). The provisions contained in s 144 (as amended) with respect to directions, so far as relating to other provisions of

the Railways Act 1993 which bind the Crown, bind the Crown: s 150(1)(j). However, nothing in s 150(1) (as amended) so far as relating to s 144 (as amended), in so far as it relates to ss 55-58 (as amended) (enforcement of licence conditions) (see PARA 179 et seq post), authorises proceedings to be brought against Her Majesty in her private capacity (s 150(2)); and s 150(2) must be construed as if the Crown Proceedings Act 1947 s 38(3) (meaning of 'Her Majesty in her private capacity': see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 56) were contained in the Railways Act 1993 (s 150(3)).

14 Ibid s 136(6) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 51(1), (3); and the Railways Act 2005 Sch 13 Pt 1).

15 Railways Act 1993 s 136(7) (amended by the Railways Act 2005 Sch 13 Pt 1). The power of giving directions under the Railways Act 1993 s 136(6) (as amended) (see the text and notes 13-14 supra) must be so exercised that the aggregate amount of any compensation payable under the public service obligations regulations, for periods ending after 1 April 1992, in respect of all obligations imposed by such directions does not exceed £3,000 million or such greater sum not exceeding £5,000 million as the Secretary of State may by order specify: s 136(8). A statutory instrument containing such an order must not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons: ss 136(9), 143(2). At the date at which this volume states the law, no such order had been made. As to the making of orders under the Railways Act 1993 generally see PARA 35 note 12 post.

16 Ibid s 136(7) (as amended: see note 15 supra).

17 As to which see note 13 supra.

18 Railways Act 1993 s 136(10) (amended by the Railways Act 2005 Sch 13 Pt 1).

UPDATE

29 Competent authorities for the purposes of the public service and financial status regulations

NOTE 4--'The public service obligations regulations' means European Parliament and EC Council Regulation 1370/2007, save that before 3 December 2012 it means, in respect of the carriage of goods by railway, EEC Council Regulation 1191/69, and in respect of the carriage of passengers by railway, European Parliament and EC Council Regulation 1370/2007: Railways Act 1993 s 136(11) (amended by SI 2010/402).

NOTE 6--Railways Act 1993 s 136(2), (2A) revoked, as from 3 December 2012: SI 2010/402.

NOTE 10--Railways Act 1993 s 136(5)(a) amended: Local Transport Act 2008 Sch 4 para 58(3).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(1) IN GENERAL/(iv) European Union Law/B. DIRECTIVES AFFECTING RAILWAYS/30. Directives governing transport by rail, etc.

B. DIRECTIVES AFFECTING RAILWAYS

30. Directives governing transport by rail, etc.

Pursuant to the EC Treaty provisions which govern transport by rail¹, the following Directives have been made²:

- 82 (1) Council Directive of 29 July 1991 on the development of the Community's railways³;
- 83 (2) Council Directive of 19 June 1995 on the licensing of railway undertakings⁴;
- 84 (3) Council Directive of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway⁵;
- 85 (4) Council Directive of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail⁶;
- 86 (5) Directive of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification⁷; and
- 87 (6) Directive of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive')⁸.

The following Directives, also made under the EC Treaty⁹, have a bearing on related matters:

- 88 (a) Council Directive of 23 July 1996 on the interoperability of the trans-European high-speed rail system¹⁰;
- 89 (b) Directive of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system¹¹;
- 90 (c) Council Directive of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector¹²; and
- 91 (d) Directive of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons¹³.

1 I.e. the Treaty Establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') Pt 3 Title V (arts 70-81) (arts 70-81 formerly arts 74-84; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ); see PARA 2 ante. See also head (a) to head (d) in the text citing Directives whose legal bases lie elsewhere.

2 As to compliance with the Directives affecting railways see PARA 31 et seq post.

3 I.e. Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) (amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L75, 15.03.2001, p 1); and Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 164)). Council Directive 91/440/EEC (OJ L237, 24.08.1991, p 25) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

4 le Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L75, 15.03.2001, p 26); and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)). Council Directive 95/18/EC (OJ L143, 27.06.1995, p 70) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

5 le Council Directive 96/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway (OJ L145, 19.06.1996, p 10). Council Directive 96/35/EC (OJ L145, 19.06.1996, p 10) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante). See also Directive 2000/18/EC of the European Parliament and of the Council of 17 April 2000 on minimum examination requirements for safety advisers for the transport of dangerous goods by road, rail or inland waterway (OJ L118, 19.05.2000, p 41). See further HEALTH AND SAFETY AT WORK.

6 le Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (OJ L235, 17.09.1996, p 25) (amended by Commission Directive 96/87/EC of 13 December 1996 (OJ L335, 24.12.1996, p 45); Commission Directive 1999/48/EC of 21 May 1999 (OJ L169, 05.07.1999, p 58); Directive 2000/62/EC of the European Parliament and of the Council of 10 October 2000 (OJ L279, 01.11.2000, p 44); Commission Directive 2001/6/EC of 29 January 2001 (OJ L30, 01.02.2001, p 42); Commission Directive 2003/29/EC of 7 April 2003 (OJ L90, 08.04.2003, p 47); Commission Directive 2004/89/EC of 13 September 2004 (OJ L293, 16.09.2004, p 14); Commission Directive 2004/110/EC of 9 December 2004 (OJ L365, 10.12.2004, p 24); Commission Directive 2006/90/EC of 3 November 2006 (OJ L305, 04.11.2006, p 6)). Council Directive 96/49/EC (OJ L235, 17.09.1996, p 25) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

7 le Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) (amended by 2002/844/EC Commission Decision of 23 October 2002 amending Directive 2001/14/EC in respect of the date for changing the working timetable for rail transport (OJ L289, 26.10.2002, p 30); and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)). Directive 2001/14/EC (OJ L75, 15.03.2001, p 29) (as amended) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante).

Notwithstanding the fact that Directive 2001/14/EC (OJ L75, 15.03.2001, p 29) (as amended) (and amending Directives 2001/12/EC of the European Parliament and of the Council of 26 February 2001 (OJ L75, 15.03.2001, p 1) and 2001/13/EC of the European Parliament and of the Council of 26 February 2001 (OJ L75, 15.03.2001, p 26)) were based on the model of the United Kingdom's indigenous industry, the United Kingdom government was subject to proceedings for failure to transpose these Directives fully into national law: see Case C-483/03 *EC Commission v United Kingdom* [2004] All ER (D) 76 (Oct), ECJ.

8 le Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (the 'Railway Safety Directive') (OJ L164, 30.04.2004, p 44). Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) was made in particular pursuant to EC Treaty art 71 (as renumbered: see note 1 supra) (as to which see PARA 2 ante). Although requirements on safety of the subsystems of the trans-European rail networks are laid down in Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) (as amended) (see head (a) in the text) and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) (as amended) (see head (b) in the text), those Directives do not define common requirements at system level and do not deal in detail with the regulation, management and supervision of safety: see Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) recital (7). Accordingly, the Railway Safety Directive was introduced in order to address the safety of the interoperable railway system as a whole, and its management and operation: see art 2(1).

9 le but not pursuant to the EC Treaty provisions which govern transport by rail specifically (as to which see note 1 supra).

10 le Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ L284, 31.10.2003, p 1); and Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)). Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) (as amended) was made in particular pursuant to EC Treaty art 156 (formerly art 129d) (as renumbered: see note 1 supra) (Guidelines and projects of common interest which relate to trans-European networks). See note 8 supra.

11 le Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)). Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) (as amended) was made in particular pursuant to EC Treaty art 156 (formerly art 129d) (as renumbered: see note 1 supra) (Guidelines and projects of common interest which relate to trans-European networks). Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) (as amended) provides the legal basis for Commission Regulation (EC) 62/2006 of 23 December 2005 concerning the technical specification for interoperability relating to the telematic applications for freight subsystem of the trans-European conventional rail system (OJ L13, 18.01.2006, p 1) (as to which see PARA 28 ante). See note 8 supra.

12 le Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (OJ L195, 27.07.2005, p 15). Council Directive 2005/47/EC (OJ L195, 27.07.2005, p 15) was made in particular pursuant to EC Treaty art 139 (formerly art 118b) (as renumbered: see note 1 supra) (contractual relations, including agreements, between management and labour in relation to social provisions).

13 le Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons (OJ L106, 03.05.2000, p 21). This Directive applies to funicular railways (amongst other devices) whereby suspension and/or traction is provided by means of cables positioned along the line of travel: see art 1(3). Directive 2000/9/EC (OJ L106, 03.05.2000, p 21) was made in particular pursuant to EC Treaty art 47 (right of establishment) (formerly art 57) (as renumbered: see note 1 supra), art 55 (services) (formerly art 6) (as so renumbered) and art 95 (approximation of laws) (formerly art 100a) (as so renumbered).

UPDATE

30 Directives governing transport by rail, etc

TEXT AND NOTES--See also European Parliament and EC Council Directive 2007/59 (OJ L315, 3.12.07, p 51) on the certification of train drivers operating locomotives and trains on the railway system in the Community (implementation date: 4 December 2009).

NOTE 3--EEC Council Directive 91/440 further amended by Directives 2006/102 (OJ L363, 20.12.2006, p 241), 2006/103 (OJ L363, 20.12.2006, p 344), 2007/58 (OJ L315, 3.12.2007, p 44).

NOTES 7, 8--EEC Council Directive 2001/14 further amended by Directive 2007/58.

NOTES 8-11--EC Council Directives 96/48, 2001/16 replaced from 19 July 2010: European Parliament and EC Council Directive 2008/57 (OJ L191, 18.7.2008, p 1) (amended by EC Commission Directive 2009/131 (OJ L273, 17.10.2009, p 12).

NOTE 8--EC Council Directive 2004/49 amended by European Parliament and EC Council Directive 2008/57 (OJ L191, 18.7.2008, p 1); and (from 24 December 2010) European Parliament and EC Directive 2008/110 (OJ L345, 23.12.2008 p 62); Directive 2008/110 makes a number of changes to account for the entry in to force of the 1999 COTIF Convention (see PARA 27).

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31. Compliance regime relating to Directives affecting railways.

Compliance with the Directives which have been issued pursuant to the EC Treaty provisions governing railway matters¹ is effected in the United Kingdom² by means of both primary and secondary legislation in the following areas:

- 92 (1) the structure of the railway industry, including the separation of infrastructure management and transport operations³;
- 93 (2) the licensing of railway undertakings⁴;
- 94 (3) the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure⁵;
- 95 (4) safety requirements for the railway system⁶;
- 96 (5) the transport of dangerous goods by rail⁷; and
- 97 (6) the interoperability of trans-European rail systems⁸.

Provision is made also for compliance with the safety requirements for cableway installations designed to carry persons⁹.

1 As to which generally see PARA 30 ante.

2 In any Act, unless the contrary intention appears, 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'Great Britain' see PARA 29 note 3 ante. Neither the Channel Islands nor the Isle of Man are within the United Kingdom.

3 Compliance with Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) (as amended) (see PARA 30 ante) is effected primarily by means of the Railways Act 1993 Pt I (ss 4-83) (as amended) (see PARA 35 et seq post) with supplementary provision being made by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pts 2-4 (regs 5-6, 8-10, 12) (see PARA 109 et seq post). The Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 were made in exercise of the powers conferred by the European Communities Act 1972 s 2(2) (implementation of Community obligations).

The Office of Rail Regulation, in performing various supervisory and regulatory functions, also contributes to developing the railway industry in the way required by the European legislation: see PARA 49 et seq post.

4 Compliance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (as amended) (see PARA 30 ante) is effected by means of the Railways Act 1993 ss 6-11 (as amended) (see PARA 83 et seq post) and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (see PARA 93 et seq post). The Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 were made in exercise of the powers conferred by the European Communities Act 1972 s 2(2) (implementation of Community obligations). European licences (which are provided for under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050) cover specified passenger and freight train operations only and even if a European licence is held (or is granted) a Railways Act 1993 licence is required for any station, light maintenance depot, network or maintenance train operation running on the rail network in Great Britain. However, any extant licences (and licence exemptions) which were granted under the Railways Act 1993 in respect of operations and services which fall within the scope of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 are subject to transitional provisions: see reg 20, Sch 4.

5 Compliance with Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) (as amended) (see PARA 30 ante) is effected primarily by means of the Railways Act 1993 ss 17-22C (as amended) (see PARA 102 et seq post) with

supplementary provision being made by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pts 2-6 (regs 7, 11, 12-32) (see PARA 110 et seq post).

6 Compliance with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive') (OJ L164, 30.04.2004, p 44) (see PARA 30 ante) is effected by means of the Railways and Transport Safety Act 2003 Pt 1 (ss 1-14); and the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992 (as amended) (implementing Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) (Ch V (arts 19-25)): see PARA 273 et seq post). The Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992 (as amended) were made in exercise of the powers conferred on the Secretary of State under the European Communities Act 1972 s 2(2) (implementation of Community obligations) and the Railways and Transport Safety Act 2003 ss 2, 6, 7(1), 9, 11, 13(1). See also the Railways (Access to Training Services) Regulations 2006, SI 2006/598 (implementing Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) art 13: see PARA 258 et seq post); and primarily the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Pt 2 (regs 3-18) (safety management, certification and authorisation) (see PARA 232 et seq post) and Pt 3 (regs 19-22) (general duties), especially reg 20 (annual safety reports) (see PARA 249 et seq post) (implementing Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) arts 1-12, 14-18) (as to which see PARA 17 et seq ante). The Railways (Access to Training Services) Regulations 2006, SI 2006/598 were made in exercise of the powers conferred on the Secretary of State under the European Communities Act 1972 s 2(2); the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended) were made in exercise of the powers conferred upon the Secretary of State by the Health and Safety at Work etc Act 1974 ss 15, 18, 43, 47, 80, 82 and Sch 3 paras 1, 4, 6-9, 14-16, 18 and 20 (as to which see PARA 194 et seq post).

7 As to compliance with Council Directive 96/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway (OJ L145, 19.06.1996, p 10) (as to which see PARA 30 ante) see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303; and as to compliance with Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (OJ L235, 17.09.1996, p 25) (as amended) (as to which see PARA 30 ante) see CARRIAGE AND CARRIERS vol 7 (2008) PARA 748 et seq; EXPLOSIVES vol 17(2) (Reissue) PARA 994 et seq; HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 555.

8 Compliance with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (as amended) (as to which see PARA 30 ante) and with Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (as amended) (as to which see PARA 30 ante) is effected by means of the Transport Act 2000 s 247, under which power (as well as under the power conferred on the Secretary of State by the European Communities Act 1972 s 2(2)) the Railways (Interoperability) Regulations 2006, SI 2006/397 (as amended) have been made (see PARA 210 et seq post).

9 Compliance with Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons (OJ L106, 03.05.2000, p 21) (as to which see PARA 30 ante) is effected by means of the Cableway Installations Regulations 2004, SI 2004/129 (as amended), which have been made under the European Communities Act 1972 s 2(2) (see PARA 260 post).

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(2) SUPERVISION OF THE RAILWAYS

(i) In general

32. Overview.

Public interest supervision of the railways in Great Britain¹ is vested in and exercised by the Secretary of State (and devolved authorities)² and by the Office of Rail Regulation³. The former's main responsibility is to determine overall transport policy as it affects railways, to provide overall direction of strategy to give effect to that policy, to determine how much public funding from central government sources will be provided to support the railways, and to determine licensing policy⁴; the latter Office bears primary responsibility for the detailed economic and safety regulation of the industry⁵.

1 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

2 As to the Secretary of State see PARA 35 et seq post.

3 As to the Office of Rail Regulation see PARA 49 et seq post. As to the development of the railway industry and the various authorities and bodies which have assumed responsibilities for regulation and supervision historically see PARAS 4 et seq ante, 44 et seq post.

4 See PARA 33 et seq post.

5 See PARA 33 et seq post.

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33. General duties of the Secretary of State, the Welsh Ministers and the Office of Rail Regulation.

The Office of Rail Regulation¹ has a duty to exercise the functions² assigned or transferred to it³ that are not safety functions⁴ in the manner which it considers best calculated⁵:

- 98 (1) to promote improvements in railway service performance⁶;
- 99 (2) otherwise to protect the interests of users of railway services⁷;
- 100 (3) to promote the use of the railway network⁸ in Great Britain⁹ for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable¹⁰;
- 101 (4) to contribute to the development of an integrated system of transport of passengers and goods¹¹;
- 102 (5) to contribute to the achievement of sustainable development¹²;
- 103 (6) to promote efficiency and economy on the part of persons providing railway services¹³;
- 104 (7) to promote competition in the provision of railway services for the benefit of users of railway services¹⁴;
- 105 (8) to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator¹⁵;
- 106 (9) to impose on the operators of railway services the minimum restrictions which are consistent with the performance of its functions¹⁶ that are not safety functions¹⁷;
- 107 (10) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance¹⁸.

The Office of Rail Regulation is under a duty in exercising the functions assigned or transferred to it that are not safety functions¹⁹ both to take into account the need to protect all persons from dangers arising from the operation of railways²⁰ and to have regard to the effect on the environment²¹ of activities connected with the provision of railway services²².

The Office of Rail Regulation is also under a duty in exercising the functions assigned or transferred to it²³ that are not safety functions²⁴:

- 108 (a) to have regard to any general guidance given to it by the Secretary of State about railway services or other matters relating to railways²⁵;
- 109 (b) to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences²⁶ to finance any activities or proposed activities of theirs in relation to which the Office of Rail Regulation has functions²⁷ (whether or not the activities in question are, or are to be, carried on by those persons in their capacity as holders of such licences)²⁸;
- 110 (c) to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services²⁹;
- 111 (d) to have regard to any notified strategies and policies of the Welsh Ministers³⁰, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services³¹;

- 112 (e) to have regard to the ability of the Welsh Ministers to carry out the functions conferred or imposed on them by or under any enactment³²;
- 113 (f) to have regard to the ability of the Mayor of London³³ and Transport for London³⁴ to carry out the functions conferred or imposed on them by or under any enactment³⁵.

In performing its duties under the above provisions³⁶ in relation to:

- 114 (i) any matter affecting the interests of users or potential users of railway services³⁷;
- 115 (ii) any matter affecting the interests of persons providing railway services³⁸; or
- 116 (iii) any matter not falling within head (i) or head (ii) above, but where the Office of Rail Regulation has been informed that³⁹: (A) public financial resources⁴⁰; or (B) funds that do not comprise such resources but are provided in whole or in part by Transport for London, the Welsh Ministers, a Passenger Transport Executive⁴¹ or any other body in receipt of such resources⁴², are or are likely to become available to be applied for purposes connected with that matter⁴³,

the Office of Rail Regulation must have regard, in particular, to the interests, in securing value for money, of the persons mentioned in heads (i) and (ii) above, of the persons who make available the resources and other funds, and of the general public⁴⁴.

The general duties set out above in relation to the Office of Rail Regulation⁴⁵, excluding the supplementary duties set out in heads (a) to (f) and heads (i) to (iii) above, have effect as in relation to the Office of Rail Regulation (but applied with modifications) in relation to both the Secretary of State⁴⁶ and the Welsh Ministers⁴⁷.

The Office of Rail Regulation has an overriding duty to exercise its regulatory functions in such a manner as not to impede the performance of any development agreement in relation to the design, construction, financing or maintenance of the Channel Tunnel rail link⁴⁸. This is its only overriding duty.

1 As to the Office of Rail Regulation see PARA 49 et seq post.

2 As to the meaning of 'functions' see PARA 7 note 12 ante.

3 le under or by virtue of the Railways Act 1993 Pt I (ss 4-83) (as amended) or the Railways Act 2005: Railways Act 1993 s 4(1) (amended by the Transport Act 2000 s 224(1), (2)(a); the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3; and the Railways Act 2005 s 3(1), (2)).

However, the Railways Act 1993 s 4(1)-(6) (as amended) (see the text and notes 1-2 supra, 4-47 infra) does not apply in relation to anything done by the Office of Rail Regulation in the exercise of functions assigned to it by s 67(3) (as substituted and amended) ('Competition Act functions': see PARA 186 post): s 4(7A) (s 4(7A), (7B) added by the Competition Act 1998 s 54(2), Sch 10 para 6(3); the Railways Act 1993 s 4(7A) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3). The Office of Rail Regulation may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of the Railways Act 1993 s 4(1)-(6) (as amended), if it is a matter to which the Office of Fair Trading could have regard when exercising that function: s 4(7B) (as so added; amended by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (2)(b); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq. In determining matters under the Railways Act 1993 s 13 (as amended) (see PARA 88 post) or under s 15B(2) (as added and amended) (see PARA 91 post), the Competition Commission also must have regard to the matters as respects which duties are imposed on the Office of Rail Regulation by s 4 (as amended): see s 13(7) (as amended), s 15B(2) (as added and amended); and PARAS 88, 91 post.

The list of objectives in the Railways Act 1993 s 4(1) (as amended) (see heads (1) to (10) in the text) must be treated, in relation to the Office of Rail Regulation only, as including the objective of facilitating the provision, management and control of facilities for transport in connection with the London Olympics: London Olympic Games and Paralympic Games Act 2006 s 17(1). The Office of Rail Regulation must consult the Olympic Delivery Authority about the duty under the Railways Act 1993 s 4(1) (as amended) (as modified by the London

Olympic Games and Paralympic Games Act 2006 s 17(1)); s 17(2). As to the Olympic Delivery Authority see THEATRES AND OTHER FORMS OF ENTERTAINMENT. As to the overriding duty imposed on the Office of Rail Regulation under the Channel Tunnel Rail Link Act 1996 s 21 (as amended) see the text and note 48 *infra*.

4 For these purposes, 'safety functions' means functions assigned or transferred to the Office of Rail Regulation under the Railways Act 1993 Pt I (as amended), under or by virtue of the Railways Act 2005, or under or by virtue of the Health and Safety at Work etc Act 1974, so far as they are being exercised for the railway safety purposes within the meaning of the Railways Act 2005 s 2, Sch 3 (as to which see PARA 196 post) or for purposes connected with those purposes: Railways Act 1993 s 4(9) (definition added by the Railways Act 2005 s 3(1), (11)(b)).

5 Railways Act 1993 s 4(1) (as amended: see note 3 *supra*). The fundamental nature of the regulator's role is founded on s 4 (as amended), and includes both a 'broader public interest role' and a 'supervisory role' relating to the running of the railways as a whole: see *Re Railtrack plc (in railway administration)*, *Winsor v Bloom* [2002] EWCA Civ 955, [2002] 4 All ER 435, [2002] 1 WLR 3002 (the regulator is required to exercise its powers in a way which furthers the national and public interest in having an efficient and effective railway system).

A licence granted under the Railways Act 1993 s 8 (as amended) (as to which see PARA 83 post) may include such conditions under s 9 (as amended) (as to which see PARA 84 post) as appear to the grantor to be requisite or expedient having regard to the duties imposed by s 4 (as amended): see s 9(1)(a); and PARA 84 post. As to competition functions see note 3 *supra*; and as to the Secretary of State and the Welsh Ministers see the text and notes 45-47 *infra*.

6 *Ibid* s 4(1)(zb) (added by the Railways Act 2005 s 3(1), (3)). See note 3 *supra*. For these purposes, 'railway service performance' includes, in particular, performance in securing each of the following in relation to railway services: reliability (including punctuality); the avoidance or mitigation of passenger overcrowding; and that journey times are as short as possible: Railways Act 1993 s 4(9) (definition added by the Railways Act 2005 s 3(1), (11)(b)). For the meaning of 'railway services' see PARA 82 post.

7 Railways Act 1993 s 4(1)(a) (substituted by the Railways Act 2005 s 3(1), (3)). Without prejudice to the generality of the Railways Act 1993 s 4(1)(a) (as substituted), the Office of Rail Regulation has a duty, in particular, to exercise the functions assigned or transferred to it under or by virtue of Pt I (ss 4-83) (as amended) or the Railways Act 2005 that are not safety functions in the manner which it considers is best calculated to protect (Railways Act 1993 s 4(2) (amended by the Transport Act 2000 s 224(1), (3)(a); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3; and the Railways Act 2005 s 3(1), (2))):

- 27 (1) the interests of users and potential users of services for the carriage of passengers by railway provided by a private sector operator otherwise than under a franchise agreement, in respect of the prices charged for travel by means of those services, and in respect of the quality of the service provided (Railways Act 1993 s 4(2)(a) (amended by the Enterprise Act 2002 Sch 25 para 30(1), (2)(a), Sch 26)); and
- 28 (2) the interests of persons providing services for the carriage of passengers or goods by railway in their use of any railway facilities which are for the time being vested in a private sector operator, in respect of the prices charged for such use and in respect of the quality of the service provided (Railways Act 1993 s 4(2)(b)).

In performing its duty under s (1)(a) (as substituted) so far as relating to services for the carriage of passengers by railway or to station services, the Office of Rail Regulation is to have regard, in particular, to the interests of persons who are disabled: s 4(6) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3). See note 3 *supra*. For these purposes, 'private sector operator' means any body or person other than a public sector operator (as to which see PARA 132 post): Railways Act 1993 s 83(1). For the meaning of 'franchise agreement' see PARA 130 note 4 post; for the meaning of 'providing or operating services for the carriage of goods by railway' see PARA 82 note 3 post; for the meaning of 'railway' see PARA 82 note 2 post; for the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 post; and for the meaning of 'station services' see PARA 82 note 5 post. As to the meaning of 'goods' see PARA 82 note 3 post.

8 For the meaning of 'network' see PARA 82 note 8 post.

9 For the meaning of 'Great Britain' see PARA 29 note 3 *ante*.

10 Railways Act 1993 s 4(1)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)). See note 3 *supra*. Further to head (3) in the text, 'passenger transport market' means the market for the supply of services for the carriage of passengers, whether by railway or any other means of transport: Railways Act 1993 s 4(9).

11 *Ibid* s 4(1)(ba) (s 4(1)(ba), (bb) added by the Transport Act 2000 s 224(1), (2)(c)). See note 3 *supra*.

12 Railways Act 1993 s 4(1)(bb) (as added: see note 11 *supra*). See note 3 *supra*.

13 Ibid s 4(1)(c). See note 3 supra.

14 Ibid s 4(1)(d) (amended by the Transport Act 2000 s 224(1), (2)(d)). See note 3 supra.

15 Railways Act 1993 s 4(1)(e). See note 3 supra. For these purposes, 'passenger service operator' means a person who provides services for the carriage of passengers by railway: s 83(1). Without prejudice to the generality of s 4(1)(e), any arrangements for the issue and use of through tickets is to be regarded as a measure falling within s 4(1)(e): s 4(7). 'Through ticket' means either a ticket which is valid for a journey which involves use of the services of more than one passenger service operator, or a combination of two or more tickets issued at the same time which are between them valid for such a journey; and 'through ticketing' is to be construed accordingly: s 83(1) (definition added by the Transport Act 2000 s 252, Sch 27 paras 17, 39(1), (4)).

16 Ie under the Railways Act 1993 Pt I (as amended) or the Railways Act 2005: see the Railways Act 1993 s 4(1)(f) (as amended: see note 17 infra).

17 Ibid s 4(1)(f) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(c); and the Railways Act 2005 s 3(1), (2)). See note 3 supra.

18 Railways Act 1993 s 4(1)(g). See note 3 supra.

19 Ibid s 4(3) (amended by the Transport Act 2000 s 224(1), (4); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3; and the Railways Act 2005 s 3(1), (2)). The text refers to the functions assigned or transferred to the Office of Rail Regulation under or by virtue of the Railways Act 1993 Pt I (as amended) or the Railways Act 2005: see the Railways Act 1993 s 4(3) (as so amended). See note 3 supra.

20 Ibid s 4(3)(a) (amended by the Railways Act 2005 ss 3(1), (4), 59(6), Sch 13 Pt 1). See note 3 supra.

21 For these purposes, 'environment' means all, or any, of the following media, namely, the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground): Railways Act 1993 s 4(9) (definition substituted by the Pollution Prevention and Control Act 1999 s 6(1), Sch 2 para 12).

22 Railways Act 1993 s 4(3)(b). See note 3 supra.

23 Ie under ibid Pt I (as amended) or the Railways Act 2005: see the Railways Act 1993 s 4(5) (as amended: see note 24 infra).

24 Ibid s 4(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3; and the Railways Act 2005 s 3(1), (2), (8)(a)). As to competition functions see note 3 supra.

25 Railways Act 1993 s 4(5)(a) (substituted by the Transport Act 2000 s 224(1), (6); amended by the Railways Act 2005 s 3(1), (2)). Before giving any guidance for the purposes of the Railways Act 1993 s 4(5)(a) (as substituted), the Secretary of State must consult the Welsh Ministers: s 4(5A) (s 4(5A)-(5D) added by the Railways Act 2005 s 3(1), (9)). As to the Welsh Ministers see PARA 35 post. As to guidance given by the Scottish Ministers see the Railways Act 1993 s 4(5)(aa), (ab) (added by the Railways Act 2005 s 3(1), (8)(b)); and as to the Scottish Ministers generally see PARA 124 note 7 post. In exercising its safety functions, other than its functions as an enforcing authority for the purposes of the Health and Safety at Work etc Act 1974, the Office of Rail Regulation is under a duty to have regard to any general guidance given to it by the Secretary of State: Railways Act 1993 s 4(5B) (as so added). As to competition functions see note 3 supra. Where any general guidance is given to the Office of Rail Regulation for the purposes of s 4(5)(a) (as substituted and amended) or s 4(5B) (as added), it may be varied or revoked by the person giving it at any time, and the guidance (and any variation or revocation of the guidance) must be published by that person in such manner as he considers appropriate: s 4(7ZA) (added by the Railways Act 2005 s 3(1), (10)).

As to the guidance given under the Railways Act 1993 s 4(5)(a) (as substituted and amended) and s 4(5B) (as added) see '*Secretary of State for Transport: Guidance to the Office of Rail Regulation*' (May 2007), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

26 For the meaning of 'network licence' see PARA 83 note 9 post.

27 Ie under or by virtue of the Railways Act 1993 Pt I (as amended) or the Railways Act 2005: see the Railways Act 1993 s 4(5)(b) (as amended: see note 28 infra).

28 Ibid s 4(5)(b) (amended by the Greater London Authority Act 1999 s 200(4); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 s 3(1), (2), (8)(c)). As to competition functions see note 3 supra.

29 Railways Act 1993 s 4(5)(c) (substituted by the Railways Act 2005 s 3(1), (8)(d)). As to competition functions see note 3 supra.

30 For these purposes, 'notified strategies and policies', in relation to the Welsh Ministers, means the strategies and policies that have been notified for the purposes of the Railways Act 1993 s 4 (as amended) to the Office of Rail Regulation: s 4(9) (definition added by the Railways Act 2005 s 3(1), (11)(a)).

31 Railways Act 1993 s 4(5)(ca) (s 4(5)(ca), (cb) added by the Railways Act 2005 s 3(1), (8)(d)). As to competition functions see note 3 supra. The term 'Welsh services' is not defined under the Railways Act 1993; cf the Railways Act 2005 ss 57(1), 58(1); and PARA 40 note 2 post.

32 Railways Act 1993 s 4(5)(cb) (as added: see note 31 supra). As to competition functions see note 3 supra.

33 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

34 As to Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

35 Railways Act 1993 s 4(5)(d) (added by the Greater London Authority Act 1999 s 200(4); and amended by the Railways Act 2005 Sch 13 Pt 1). As to competition functions see note 3 supra.

36 le under the Railways Act 1993 s 4(1)-(5A) (as amended) (see the text and notes 1-35 supra): s 4(5C) (as added: see note 25 supra). As to competition functions see note 3 supra.

37 Ibid s 4(5C)(a) (as added: see note 25 supra). As to competition functions see note 3 supra.

38 Ibid s 4(5C)(b) (as added: see note 25 supra). As to competition functions see note 3 supra.

39 Ibid s 4(5C)(c), (5D) (as added: see note 25 supra). As to competition functions see note 3 supra.

40 Ibid s 4(5C)(c), (5D)(a) (as added: see note 25 supra). The text refers to public financial resources within the meaning of s 19A, Sch 4A para 1D (as added and amended): see s 4(5C)(c), (5D)(a) (as so added). As to competition functions see note 3 supra.

41 As to Passenger Transport Executives see PARA 63 post.

42 Railways Act 1993 s 4(5C)(c), (5D)(b) (as added: see note 25 supra). As to competition functions see note 3 supra.

43 Ibid s 4(5C)(c), (5D) (as added: see note 25 supra). As to competition functions see note 3 supra.

44 Ibid s 4(5C) (as added: see note 25 supra). The text refers to the persons who make available the resources and other funds mentioned in the sub-section in question: see s 4(5C) (as so added). As to competition functions see note 3 supra.

45 le ibid s 4(1)-(3) (as amended) (see the text and notes 1-22 supra): see s 4(3A), (3C) (both as added).

46 Ibid s 4(3A) (added by the Transport Act 2000 s 224(1), (5); and amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). For these purposes, 'modifications' includes additions, alterations and omissions and cognate expressions are to be construed accordingly: Railways Act 1993 s 151(1). The modifications referred to in the text are that: (1) the references in s 4(1)-(3) (as amended) (see the text and notes 1-22 supra) to the functions transferred or assigned to the Secretary of State under or by virtue of Pt I (as amended) include only the functions transferred or assigned to him under or by virtue of ss 6-22 (as amended) (see PARA 83 et seq post) (s 4(3A)(b) (as so added; amended by the Railways Act 2005 Sch 13 Pt 1)); and (2) the references to the functions transferred or assigned under or by virtue of the Railways Act 2005 include only the functions transferred or assigned to the Secretary of State under or by virtue of the provisions of Pt 4 (ss 22-45) (network modifications etc: see PARA 145 et seq post) other than s 39 (quality contracts schemes) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1209 et seq) (Railways Act 1993 s 4(3A)(c) (as so added; amended by the Railways Act 2005 s 3(1), (5))). The Secretary of State is also under a duty, in exercising the functions assigned or transferred to him under or by virtue of the Railways Act 1993 Pt I (as amended) or the Railways Act 2005, to promote the award of franchise agreements to companies in which qualifying railway employees have a substantial interest, 'qualifying railway employees' meaning for this purpose persons who are or have been employed in an undertaking which provides or provided the services to which the franchise agreement in question relates at a time before those services begin to be provided under that franchise agreement: Railways Act 1993 s 4(4) (amended by the Railways Act 2005 s 3(1), (7)). The obligations of the Secretary of State, so far as imposed by or under any provision of the Railways Act 1993 Pt I (as amended), to secure the provision of any services (eg see PARA 138 note 3 post), or to secure the operation of any additional railway asset, do not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 50(1)

(amended by the Transport Act 2000 s 274, Sch 31 Pt IV; and the Railways Act 2005 ss 54(4), 59(6), Sch 11 paras 1, 5, Sch 13 Pt 1). For the meaning of 'additional railway asset' see PARA 136 note 6 post. The Secretary of State may also exercise his franchising functions in order to encourage investment in railways: see PARA 36 post. As to competition functions see note 3 supra. As to the Secretary of State see PARA 35 post. As to the duty of the Office of Rail Regulation to assist and advise national authorities see PARA 58 post; and as to the duty of Passenger Transport Executives to do likewise see PARA 65 post.

47 Railways Act 1993 s 4(3C) (added by the Railways Act 2005 s 3(1), (6)). The modifications referred to in the text are that, in relation to the Welsh Ministers, the references in the Railways Act 1993 s 4(1)-(3) (as amended) (see the text and notes 1-22 supra) to functions transferred or assigned under or by virtue of Pt I (as amended) or the Railways Act 2005 include only the functions transferred or assigned to them (originally to the National Assembly for Wales) under or by virtue of the provisions of Pt 4 (network modifications etc: see PARA 145 et seq post) other than s 39 (quality contracts schemes) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1209 et seq): Railways Act 1993 s 4(3C) (as so added). As to modifications in relation to the Scottish Ministers see s 4(3B) (added by the Railways Act 2005 s 3(1), (6)). As to competition functions see note 3 supra.

48 See the Channel Tunnel Rail Link Act 1996 s 21 (as amended); and PARA 324 post. For the meaning of 'development agreement' for these purposes see PARA 114 note 14 post. As to the duty imposed on the Office of Rail Regulation under the London Olympic Games and Paralympic Games Act 2006 s 17 see note 3 supra.

UPDATE

33 General duties of the Secretary of State, the Welsh Ministers and the Office of Rail Regulation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(2) SUPERVISION OF THE RAILWAYS/(i) In general/34. Provision of information to the Secretary of State or the Office of Rail Regulation.

34. Provision of information to the Secretary of State or the Office of Rail Regulation.

Licence holders¹ are under a duty to furnish to the Secretary of State² or the Office of Rail Regulation³, in such form and manner as he or it may by notice⁴ request, such information⁵ as he or it may so request, being information which the Secretary of State or the Office of Rail Regulation considers necessary for the purpose of facilitating the performance of any functions⁶ of the Secretary of State or (as the case may be) that Office or any other function or activity of his or its in relation to railway services⁷.

Holders of European licences⁸ are under a duty to furnish to the Office of Rail Regulation in such form and manner as it may by notice request such information as it may so request, being information which the Office of Rail Regulation considers necessary for the purpose of facilitating the performance of any of its functions under any instrument made for the purpose of implementing the EC Council Directive on the licensing of railway undertakings⁹.

Either such request¹⁰ must be complied with within such time (being not less than 28 days from the making of the request) as may be specified in the request¹¹. If a request made by the Secretary of State or the Office of Rail Regulation to a licence holder¹² is not complied with, the Secretary of State or the Office of Rail Regulation may serve a notice¹³ on the person from whom the information was so requested¹⁴. If a request made to the holder of a European licence¹⁵ is not complied with, the Office of Rail Regulation may serve a notice¹⁶ on the person from whom the information was so requested¹⁷. In either case, the notice to be served¹⁸ is a notice signed by the Secretary of State or by the Office of Rail Regulation¹⁹, and:

- 117 (1) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Secretary of State or the Office of Rail Regulation (as the case may be²⁰) or to any person appointed by the Secretary of State or the Office of Rail Regulation (as the case may be²¹) for the purpose, any documents²² which are specified or described in the notice and are in that person's custody or under his control²³; or
- 118 (2) requiring that person to furnish, at a time and place and in the form and manner specified in the notice, to the Secretary of State or the Office of Rail Regulation (as the case may be²⁴) such information as may be specified or described in the notice²⁵.

No person is required by these means²⁶ to produce any documents which he could not be compelled to produce in civil proceedings in the court²⁷ or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings²⁸. However, a person who intentionally alters, suppresses²⁹ or destroys any document which he has been required by any such notice³⁰ to produce is guilty of an offence³¹; and if a person makes default in complying with such a notice³², the court may, on the application of the Secretary of State or the Office of Rail Regulation³³ make such order as the court thinks fit for requiring the default to be made good³⁴.

1 For the meaning of 'licence holder' see PARA 83 note 6 post.

2 As to the general duties of the Secretary of State under the Railways Act 1993 Pt I (ss 4-83) (as amended) see s 4 (as amended); and PARA 33 ante. As to the Secretary of State see PARA 35 post.

3 As to the general duties of the Office of Rail Regulation under ibid Pt I (as amended) see s 4 (as amended); and PARA 33 ante; and as to the Office of Rail Regulation see PARA 49 et seq post.

4 For these purposes, 'notice' means notice in writing: ibid s 151(1).

5 For the purposes of ibid Pt I (as amended), 'information' includes accounts, estimates, records and returns: s 83(1). As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see s 146 (cited in PARA 416 post).

6 Ie under ibid Pt I (as amended), the Transport Act 2000 or the Railways Act 2005: see the Railways Act 1993 s 80(1) (as amended: see note 7 infra). As to the meaning of 'functions' see PARA 7 note 12 ante.

7 Ibid s 80(1) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 38(a); and the Railways Act 2005 ss 1(1), 54(4), Sch 1 Pt 1 para 33(1), (2), Sch 11 paras 1, 12). For the meaning of 'railway services' see PARA 82 post.

The requirement to supply information may be written into licences in the form of a condition and enforceable as such via the mechanisms associated with that regime: see PARA 83 et seq post.

8 For the meaning of 'European licence' see PARA 92 note 2 post. As to European licences generally see PARA 93 et seq post.

9 Railways Act 1993 s 80(1A) (added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 3, Sch 1 Pt 1 para 3(1), (7)(a)). The text refers to Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L75, 15.03.2001, p 26); and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)) (as to which see PARA 30 ante): see the Railways Act 1993 s 80(1A) (as so added). Compliance with Council Directive 95/18/EC (OJ L143, 27.06.1995, p 70) (as amended) is effected by means of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (see PARAS 31 ante, 93 et seq post).

The Railways Act 1993 s 80 (as amended) has been applied with modifications for the purposes of information requested by the Office of Rail Regulation under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 31; and PARAS 61 note 29, 62 note 11, 112 note 7 post.

10 Ie a request under either the Railways Act 1993 s 80(1) (as amended) (see the text and notes 1-7 supra) or under s 80(1A) (as added) (see the text and notes 8-9 supra): see s 80(2) (as amended: see note 11 infra).

11 Ibid s 80(2) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (7)(b)).

12 Ie a request under the Railways Act 1993 s 80(1) (as amended) (see the text and notes 1-7 supra): see s 80(3) (as amended: see note 14 infra).

13 Ie under ibid s 80(4) (as amended): see s 80(3) (as amended: see note 14 infra).

Any document required or authorised by virtue of the Railways Act 1993 to be served (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) on any person may be served (s 149(1), (5)):

- 29 (1) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address (s 149(1)(a));
- 30 (2) if the person is a body corporate, by serving it in accordance with head (1) supra on the secretary of that body (s 149(1)(b)); or
- 31 (3) if the person is a partnership, by serving it in accordance with head (1) supra on a partner or a person having the control or management of the partnership business (s 149(1)(c)).

For the purposes of s 149 and the Interpretation Act 1978 s 7 (references to the service of documents by post: see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Railways Act 1993 s 149, the proper address of any person on whom a document is to be served is his last known address, except that: (a) in the case of service on a body corporate or its secretary, it is the address of the registered or principal office of the body (s 149(2)(a)); (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership (s 149(2)(b)).

For the purposes of s 149(2), the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 149(2). If a person to be served by virtue of the Railways Act 1993 with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of s 149(2)) as the one at which he or someone on his behalf will accept documents of the same description as that document, then, in relation to that document, that address is treated as his proper address for the purposes of s 149 and for the purposes of the Interpretation Act 1978 s 7 in its application to the Railways Act 1993 s 149, instead of that determined in accordance with s 149(2): s 149(3). The provision made by s 149 does not apply to any document in relation to the service of which provision is made by rules of court: s 149(4). For these purposes, 'secretary', in relation to a local authority, means the proper officer within the meaning of the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 431); and 'local authority' includes a metropolitan county passenger transport authority: see s 149(5). For the meaning of 'body corporate' see PARA 7 note 4 ante; for the meaning of 'company' see PARA 7 note 4 ante; and for the meaning of 'United Kingdom' see PARA 29 note 3 ante. As to passenger transport authorities see PARA 63 et seq post. As to the service of documents under the Railways Act 1993 ss 118-120 (as amended) using electronic communications see s 149A (as added); and PARA 285 et seq post.

14 Ibid s 80(3) (amended by the Railways Act 2005 Sch 1 Pt 1 para 33(1); and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (7)(c)).

15 Ie a request under the Railways Act 1993 s 80(1A) (as added) (see the text and notes 8-9 supra): see s 80(3A) (as added: see note 17 infra).

16 Ie under ibid s 80(4) (as amended): see s 80(3A) (as added: see note 17 infra).

17 Ibid s 80(3A) (added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (7)(d)).

18 Ie a notice under the Railways Act 1993 s 80(4) (as amended): see s 80(4) (as amended: see note 19 infra).

19 Ibid s 80(4) (amended by the Railways Act 2005 Sch 1 Pt 1 para 33(1)). In its application to a notice served by virtue of the Railways Act 1993 s 80(3A) (as added) (see the text and notes 15-17 supra), s 80(4) (as amended) has effect with the omission of the references to the Secretary of State: s 80(4) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (7)(e)).

20 See note 19 supra.

21 See note 19 supra.

22 Any reference in the Railways Act 1993 s 80 (as amended) to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form: s 80(9).

23 Ibid s 80(4)(a) (amended by the Railways Act 2005 Sch 1 Pt 1 para 33(1)).

24 See note 19 supra.

25 Railways Act 1993 s 80(4)(b) (amended by the Railways Act 2005 Sch 1 Pt 1 para 33(1)).

26 Ie under the Railways Act 1993 s 80(4) (as amended): see s 80(5).

27 Ie the High Court, in relation to England and Wales: see ibid s 80(10). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

28 Ibid s 80(5).

29 The reference in ibid s 80 (as amended) to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form: s 80(9).

30 Ie under ibid s 80(4) (as amended): see s 80(7).

31 Ibid s 80(7). A person guilty of such an offence as is mentioned in the text is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine: see s 80(7); and PARA 412 post. As to the statutory maximum see PARA 367 note 6 post.

32 Ie under ibid s 80(4) (as amended): see s 80(8) (as amended: see note 34 infra).

33 le in the case of a request under *ibid* s 80(1) (as amended) (see the text and notes 1-7 *supra*) or the Office of Rail Regulation only in the case of a request under s 80(1A) (as added) (see the text and notes 8-9 *supra*): see s 80(8) (as amended: see note 34 *infra*).

34 *Ibid* s 80(8) (amended by the Railways Act 2005 Sch 1 Pt 1 para 33(1); and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (7)(f)). Any order such as is mentioned in the text may provide that all the costs or expenses of and incidental to the application are to be borne by the person in default or by any officers of a company or other association who are responsible for its default: Railways Act 1993 s 80(8) (as so amended).

UPDATE

34 Provision of information to the Secretary of State or the Office of Rail Regulation

NOTE 13--In definition of 'local authority' reference to a metropolitan county passenger transport authority is now to an Integrated Transport Authority for an integrated transport area in England (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247); 'local authority' also includes a combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 *et seq*): Railways Act 1993 s 149(5) (amended by the Local Transport Act 2008 Sch 4 para 58(4); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 86).

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(ii) The National Authority

A. NATIONAL AUTHORITY

35. The Secretary of State and Welsh Ministers.

Despite the fact that older statutes refer to ministers (occasionally, to specific ministers) or to government departments, in law the office of Secretary of State is one and accordingly many modern statutes refer simply to 'the Secretary of State' without reference to a particular department or ministry¹. At the date at which this volume states the law, in matters relating to railways, and unless the context otherwise requires, the Secretary of State referred to is the Secretary of State for Transport².

Many statutory functions vested in a Secretary of State or a Minister of the Crown are transferred so as to be exercisable in relation to Wales³ by the Welsh Ministers⁴. For the purposes of this title, the functions so transferred⁵ include the approval of grants for the provision, improvement or development of facilities for public passenger transport in Great Britain⁶; and functions under the Transport and Works Act 1992⁷. The order, rule and regulation-making functions of the Secretary of State under the latter Act are made subject to constraint⁸. In general, Acts that have come into force since the establishment of the National Assembly for Wales have made specific provision for the exercise of functions in relation to Wales⁹.

The Secretary of State has been designated for the purposes of implementing the Community obligations of the United Kingdom¹⁰ in relation to railways and railway transport, including the transport of dangerous or environmentally hazardous goods by rail¹¹.

Under the Railways Act 1993, the Secretary of State has the power by order to make such modifications of existing provisions as appear to him to be necessary or expedient¹².

1 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

2 As to the general duties of the Secretary of State under the Railways Act 1993 Pt I (ss 4-83) (as amended) and the Railways Act 2005 Pt 4 (ss 22-45) see PARA 33 ante. There is to be paid out of money provided by Parliament: (1) any administrative expenses incurred by the Secretary of State or the Treasury in consequence of the provisions of the Railways Act 1993 (s 142(a)); (2) any expenditure incurred by the Secretary of State for or in connection with the carrying out of his functions under the Railways Act 2005 (s 55(1)(a)); and (3) any increase attributable to either the Railways Act 1993 or the Railways Act 2005 in the sums which are payable out of money so provided under any other Act (Railways Act 1993 s 142(b); Railways Act 2005 s 55(1)(b)). Expenditure of the Secretary of State in consequence of the Railways and Transport Safety Act 2003 also must be paid out of money provided by Parliament: s 119. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

In 1919, the Ministry of Transport was created for the purpose of improving the means of, and the facilities for, locomotion and transport: see the Ministry of Transport Act 1919 s 1 (repealed). At the same time, all the powers and duties of other government departments, in relation to railways and light railways (*inter alia*) were transferred to the Minister of Transport: see s 2 (repealed). This transfer included the powers and duties of the Board of Trade which had succeeded to the powers and duties of the former Commissioners of Railways by virtue of the Railway Regulation Act 1851 s 1 (repealed). In 1970, the Ministry of Transport was dissolved and all functions of the Minister of Transport were transferred to the Secretary of State for the Environment: see the Secretary of State for the Environment Order 1970, SI 1970/1681, art 2. (In practice, these functions were exercised by the Secretary of State for the Environment.) The transport functions of the Secretary of State,

namely such functions relating to (*inter alia*) road and rail transport as were exercised by the Secretary of State for the Environment, then devolved to the Secretary of State for Transport: see the Secretary of State for Transport Order 1976, SI 1976/1775; the Minister of Transport Order 1979, SI 1979/571; and the Transfer of Functions (Transport) Order 1981, SI 1981/238, art 2. The functions of the Secretary of State for Transport were transferred to the Secretary of State for the Environment, Transport and the Regions in 1997: see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, arts 2, 3. In June 2001, the functions of the Secretary of State for the Environment, Transport and the Regions were divided between the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Trade and Industry and the Secretary of State for Transport, Local Government and the Regions: see the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568. In November 2002, functions of the Secretary of State for Transport, Local Government and the Regions were transferred formally to the Secretary of State for Work and Pensions, the Lord Chancellor, the First Secretary of State and the Secretary of State for Transport: see the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, arts 6-8.

3 For the meaning of 'Wales' see PARA 29 note 3 ante.

4 These functions were previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1) or, in the case of functions conferred under enactments subsequent to the Government of Wales Act 1998, by virtue of particular provision made under those enactments: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Further transfers of ministerial functions to the Welsh Ministers may be effected by Order in Council pursuant to s 58, Sch 3 paras 1-8. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 le by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended).

6 le the Transport Act 1968 s 56 (as amended) (as to which see PARA 43 post): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

7 See *ibid* Sch 1 (as amended). Functions under the Transport and Works Act 1992 are transferred except: (1) the order-making function under s 1 (railways etc: see PARA 302 post) and s 3 (inland waterways, etc: see PARA 522 post) where any order made thereunder would have effect both in Wales and England; (2) s 25(4) (see PARA 306 post), Pt II (ss 26-59) (as amended) (see PARA 204 et seq post) and s 60 (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1567); (3) the order, rule and regulation-making powers conferred by s 2 (see PARA 302 post), s 4 (inland waterways, etc: see PARA 522 post), s 6(2)-(6) (as amended) (see PARA 307 post), s 7(1)(a) (see PARA 304 post), s 7(4) (see PARA 307 post), s 8 (see PARA 310 post), s 10 (see PARA 311 post) and s 15 (see PARA 316 post); and (4) the functions vested in a 'Minister of the Crown' under s 9(4), (5) (see PARA 317 post): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended). The functions of the 'Secretary of State' under the Transport and Works Act 1992 s 9 (as amended) (see PARA 317 post) are exercisable by the Welsh Ministers concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended). Orders made by the Welsh Ministers are subject to special parliamentary procedure to such extent as is provided for by the references under the Acquisition of Land Act 1981 s 12 (as amended) (notice of order to owners, lessees and occupiers: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 560), s 18 (National Trust: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 603), and s 28 (as amended), Sch 3 Pt II para 5 (National Trust: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 608): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended). The Transport and Works Act 1992 s 23(10) (as amended) (see PARA 315 post) has effect with modifications: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended).

8 le the functions under the Transport and Works Act 1992 s 1 (see PARA 302 post), s 3 (see PARA 522 post), s 6 (as amended) (see PARA 307 post), s 7(4) (see PARA 307 post), s 8 (see PARA 310 post), s 10 (see PARA 311 post) and s 15 (see PARA 316 post): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2 (as amended).

9 Subject to the matters discussed in note 4 *supra*, see eg the Railways Act 1993 s 4 (as amended) (general duties of the National Assembly for Wales) (see PARA 33 ante); and the Railways Act 2005 ss 10-11 (franchising and financial assistance in relation to Wales: see PARAS 40, 42 post).

10 le for the purposes of the European Communities Act 1972 s 2(2): see the European Communities (Designation) Order 1996, SI 1996/266, art 2(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 359. For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

11 Ibid art 2(1), Schedule. Where a minister is designated in relation to any item in the Schedule, then, for the purposes of the European Communities Act 1972 s 2(2) (see note 10 supra), that minister is also hereby designated in relation to anything supplemental or related to the matters specified in that item: European Communities (Designation) Order 1996, SI 1996/266, art 2(2).

12 The Secretary of State may by order make such modifications of existing provisions as appear to him to be necessary or expedient in consequence of the provisions of the Railways Act 1993, or of any instrument made under or by virtue of the Railways Act 1993, being modifications in respect of:

- 32 (1) any reference in an existing provision to the British Railways Board or any subsidiary of the Board (s 153(1)(a));
- 33 (2) any reference (in whatever terms) in an existing provision to any railway, railway service or railway undertaking (s 153(1)(b));
- 34 (3) any reference (in whatever terms) in an existing provision to any person who provides a railway service, or carries on a railway undertaking, or who is authorised to do so under or by virtue of any enactment (s 153(1)(c));
- 35 (4) any reference in an existing provision to any enactment amended or repealed by or under the Railways Act 1993 (s 153(1)(d));
- 36 (5) any existing provision, so far as appearing to the Secretary of State to be of no further practical utility, having regard to the provisions of the Railways Act 1993 (s 153(1)(e));
- 37 (6) any other inconsistency between an existing provision and the Railways Act 1993 (s 153(1)(f)).

For these purposes, 'existing provision' means a provision contained in any Act (whether public general or local) passed, or in subordinate legislation made, before the relevant date, where the 'relevant date', in relation to any modification, means the date of the coming into force of the provision of the Railways Act 1993 on which the modification is consequential: s 153(2). For the meaning of 'railway' see the wider meaning cited in PARA 82 note 2 post; definition applied by s 153(2). For the meaning of 'railway services' see PARA 82 post; definition applied by s 153(2). See also the Transport and Works Act 1992 s 5(3)(b) (amendments, repeals, revocations made by an order); and PARA 303 post.

Any power of the Secretary of State under the Railways Act 1993 to make orders, except the power to make provisional or final orders under s 55 (as amended) (see PARA 180 post), and any power of the Secretary of State under the Railways Act 1993 to make regulations, is exercisable by statutory instrument: s 143(1) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 15(a)). Any statutory instrument which contains (whether alone or with other provisions) regulations or an order under the Railways Act 1993 made by the Secretary of State, other than an order under s 136(8) (see PARA 29 note 15 ante) or s 154(2) (commencement), and which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, is to be subject to annulment in pursuance of a resolution of either House of Parliament: s 143(2). Any such power conferred by the Railways Act 1993 to make regulations, and any power so conferred on the Secretary of State to make an order, other than a provisional or final order under s 55 (as amended), includes power, exercisable in the same manner, to make such incidental, supplemental, consequential or transitional provision as may appear necessary or expedient to the authority by whom the power to make the regulations or order is exercisable: s 143(3) (amended by the Railways Act 2005 Sch 11 paras 1, 15(b)). Any power under the Railways Act 1993 to make regulations, and any such power of the Secretary of State to make an order, other than a provisional or final order under s 55 (as amended), may be exercised, in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes or descriptions of case, so as to make, as respects the cases in relation to which it is exercised, different provision for different cases or for different classes or descriptions of case: s 143(4) (amended by the Railways Act 2005 Sch 11 paras 1, 15(c)).

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36. Exercise of franchising functions to encourage investment in railways.

The Secretary of State¹, in exercising or deciding whether or not to exercise any of his franchising functions², may take into account the desirability of encouraging railway investment³ and may exercise any such functions for the purpose of encouraging railway investment (or for purposes which include that purpose)⁴. The Secretary of State has power to enter into agreements under which an undertaking is given by him: (1) to exercise his franchising functions⁵; (2) to refrain from exercising them⁶; or (3) to exercise them in a particular manner⁷.

1 Railways Act 1993 s 54(1) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 6(1)(a)). As to the Secretary of State see PARA 35 ante.

2 For these purposes, 'franchising functions', in relation to the Secretary of State, means: (1) any of the functions of the Secretary of State under the Railways Act 1993 ss 17-19 (as amended) (access agreements: see PARA 102 et seq post), s 23 (as amended) (passenger services to be subject to franchise agreements: see PARA 130 post), s 24 (as amended) (exemption of passenger services from franchise agreements) (see PARA 131 post) or ss 26-31 (as amended) (tenders for franchises, etc) (see PARA 133 et seq post); (2) any power conferred on the Secretary of State under or by virtue of the Railways Act 2005 s 1(2) (transfer scheme made in relation to the Strategic Rail Authority) (see PARA 46 post); and (3) any other functions of the Secretary of State which relate to the provision of railway passenger services, or the operation of additional railway assets, under or by virtue of franchise agreements: Railways Act 1993 s 54(3) (definition amended by the Transport Act 2000 s 274, Sch 31 Pt IV; and the Railways Act 2005 Sch 11, PARAS 1, 6(3)). For these purposes, 'railway passenger service' means any service for the carriage of passengers by railway: Railways Act 1993 s 83(1). For the meaning of 'additional railway asset' see PARA 136 note 6 post; for the meaning of 'franchise agreement' see PARA 130 note 4 post; and for the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 post. As to the meaning of 'functions' see PARA 7 note 12 ante. As to the general duties of the Secretary of State under Pt I (ss 4-83) (as amended) see s 4 (as amended); and PARA 33 ante.

3 Ibid s 54(1)(a) (amended by the Railways Act 2005 Sch 11 paras 1, 6(1)(b)). For these purposes, 'railway investment' means investment in assets for use in the provision of railway services: Railways Act 1993 s 54(3). For the meaning of 'railway services' see PARA 82 post.

4 Ibid s 54(1)(b).

5 Ibid s 54(2)(a) (s 54(2) substituted by the Railways Act 2005 Sch 11 paras 1, 6(2)).

6 Railways Act 1993 s 54(2)(b) (as substituted: see note 5 supra).

7 Ibid s 54(2)(c) (as substituted: see note 5 supra). In practice, this power has been used by the Secretary of State almost exclusively to enter into commitments in favour of rolling stock leasing companies. Under the contracts so made, known as 'section 54 agreements', the Secretary of State commits to ensuring that, at the end of the term of a particular franchise, the successor franchise operator will lease specified rolling stock on the same terms as its predecessor. This arrangement enables the rolling stock leasing company to set its lease charges at rates which cover the whole economic life of the trains (typically 25-30 years), thus making the payments lower than if they were spread over the life of a single franchise (which may be no more than seven or ten years).

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37. Keeping of register by the national authority.

The Secretary of State¹ must, at such premises and in such form as he may determine, maintain a register²; and he must³ cause to be entered in the register the provisions of⁴:

- 119 (1) every franchise exemption⁵;
- 120 (2) every franchise agreement⁶;
- 121 (3) every amendment⁷ (however described) of a franchise agreement other than any which are not likely to have a material effect on the provision of services under the agreement or on any sums payable under the agreement⁸;
- 122 (4) every determination made by him⁹ that a closure¹⁰ is a minor modification¹¹ or that closures of a particular description are minor modifications¹²;
- 123 (5) every revocation of a determination made by him¹³ in relation to a description of closures¹⁴;
- 124 (6) every condition agreed to¹⁵ in connection with a determination made by him¹⁶;
- 125 (7) every final or provisional order¹⁷ made by the Secretary of State in relation to a franchise agreement, or to any closure or proposed closure or to any closure requirement, every revocation of such an order and every notice given by the Secretary of State¹⁸ that he is satisfied that he does not need to make such an order¹⁹;
- 126 (8) every penalty imposed by the Secretary of State pursuant to his powers of enforcement²⁰;
- 127 (9) every statement of policy published by the Secretary of State with respect to the imposition of penalties referred to in head (8) above²¹;
- 128 (10) every designation²² and every variation or revocation of such a designation²³.

The Secretary of State may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as he considers it appropriate to exclude for the purpose of maintaining the confidentiality of²⁴:

- 129 (a) matters relating to the affairs of an individual the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that individual²⁵; and
- 130 (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that body²⁶.

If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest he may decide not to enter that provision in the register²⁷.

The contents of the register must be available for inspection at any time by the Office of Rail Regulation²⁸, without payment of any fee; and the Office of Rail Regulation may require the Secretary of State, without payment of any fee, to supply it with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Secretary of State to be a true copy or extract²⁹.

- 1 As to the general duties of the Secretary of State under the Railways Act 1993 Pt I (ss 4-83) (as amended) see s 4 (as amended); and PARA 33 ante; and as to the Secretary of State see PARA 35 ante.
- 2 Railways Act 1993 s 73(1) (amended by the Railways Act 2005 ss 1(1), 59(6), Sch 1 Pt 1 para 30(1), (2), Sch 13 Pt 1).
- 3 le subject to the Railways Act 1993 s 73(3), (4) (as amended) (see the text and notes 24-27 infra): see s 73(2) (as amended).
- 4 Ibid s 73(2) (amended by the Railways Act 2005 Sch 1 Pt 1 para 30(1), (3)). The text refers to provisions which must be entered except so far as they are required to be entered in the register maintained under the Railways Act 1993 s 73A (as added) (keeping of register by the Scottish Ministers): see s 73(2) (as so amended).
- 5 Ibid s 73(2)(a). For the meaning of 'franchise exemption' see PARA 131 note 3 post.
- 6 Ibid s 73(2)(b). For the meaning of 'franchise agreement' see PARA 130 note 4 post.
- 7 Without prejudice to the generality of ibid s 73(2)(d) (as amended), 'amendment' for these purposes includes any variation of the property, rights and liabilities which from time to time constitute the franchise assets in relation to the franchise agreement in question, whether the variation is effected in accordance with the terms of, or by an amendment made to, the franchise agreement: s 73(2). For the meaning of 'franchise assets' see PARA 139 note 4 post.
- 8 Ibid s 73(2)(d) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 37(1), (2)).
- 9 le under the Railways Act 2005 s 34 (as to which see PARA 159 post): see the Railways Act 1993 s 73(2)(da) (as added and substituted: see note 12 infra).
- 10 As to closures under the Railways Act 2005 Pt 4 (ss 22-45) see PARA 145 et seq post.
- 11 As to proposals for minor modifications see PARA 159 post.
- 12 Railways Act 1993 s 73(2)(da) (added by the Transport Act 2000 s 216, Sch 17 Pt II paras 17, 27(1)(a); substituted by the Railways Act 2005 Sch 11 paras 1, 11(1)(a)).
- 13 le under the Railways Act 2005 s 34 (as to which see PARA 159 post): see the Railways Act 1993 s 73(2)(db) (as added: see note 14 infra).
- 14 Ibid s 73(2)(db) (s 73(db), (dc) added by the Railways Act 2005 Sch 11 paras 1, 11(1)(a)).
- 15 le under ibid s 34(5) (as to which see PARA 159 post): see the Railways Act 1993 s 73(2)(dc) (as added: see note 14 supra).
- 16 Ibid s 73(2)(dc) (as added: see note 14 supra).
- 17 For the meanings of 'final order' and 'provisional order' see PARA 179 note 4 post.
- 18 le under the Railways Act 1993 s 55(6) (as amended) (orders for securing compliance: see PARA 180 post). For the meaning of 'notice' see PARA 34 note 4 ante.
- 19 Ibid s 73(2)(e) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 16(a); and the Railways Act 2005 Sch 1 Pt 1 para 30(3)(c), Sch 11 paras 1, 11(1)(b), Sch 13 Pt 1).
- 20 Railways Act 1993 s 73(2)(f) (s 73(2)(f), (g) added by the Transport Act 2000 Sch 27 paras 17, 37(1), (3)). The text refers to every penalty imposed under the Railways Act 1993 s 57A (as added and amended) (see PARA 183 post): see s 73(2)(f) (as so added).
- 21 Ibid s 73(2)(g) (as added: see note 20 supra). The text refers to the policy published by the Secretary of State under s 57A (as added and amended) (see s 57B (as added and amended); and PARA 183 post): see s 73(2)(g) (as so added).
- 22 le under ibid s 23 (as amended) (designation of passenger services to be subject to franchise agreements: see PARA 130 post): see s 73(2)(ga) (as added: see note 23 infra).
- 23 Ibid s 73(2)(ga) (added by the Railways Act 2005 Sch 1 Pt 1 para 30(3)(d)).
- 24 Railways Act 1993 s 73(3) (s 73(3), (3)(a), (3)(b) substituted by the Railways Act 2005 Sch 1 Pt 1 para 30(4)).

25 Railways Act 1993 s 73(3)(a) (as substituted: see note 24 supra).

26 Ibid s 73(3)(b) (as substituted: see note 24 supra).

27 Ibid s 73(4) (amended by the Railways Act 2005 Sch 1 Pt 1 para 30(5)).

28 As to the general duties of the Office of Rail Regulation under the Railways Act 1993 Pt I (as amended) see s 4 (as amended); and PARA 33 ante; as to the keeping of a register by the Office of Rail Regulation see PARA 56 post; and as to the Office of Rail Regulation see PARA 49 et seq post.

29 Ibid s 73(7) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3; and the Railways Act 2005 Sch 1 Pt 1 para 30(1), (7)).

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38. Code of practice relating to users of services who are disabled.

The Secretary of State¹ must²: (1) prepare and from time to time revise³; and (2) publish and otherwise promote the adoption and implementation of⁴, a code of practice for protecting the interests of users of railway passenger services⁵ or station services⁶ who are disabled⁷. In preparing or revising the code of practice, the Secretary of State must consult the Disabled Persons Transport Advisory Committee⁸.

1 As to the general duties of the Secretary of State under the Railways Act 1993 Pt I (ss 4-83) (as amended) see s 4 (as amended); and PARA 33 ante; and as to the Secretary of State see PARA 35 ante.

2 Railways Act 1993 s 71B(1) (s 71B added by the Transport Act 2000 s 216, Sch 17 Pt II paras 17, 28(1); the Railways Act 1993 s 71B(1) amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 29(1)).

3 Railways Act 1993 s 71B(1)(a) (as added: see note 2 supra).

4 Ibid s 71B(1)(b) (as added: see note 2 supra).

5 For the meaning of 'railway passenger service' see PARA 36 note 2 ante.

6 For the meaning of 'station services' see PARA 82 note 5 post.

7 Railways Act 1993 s 71B(1) (as added: see note 2 supra).

8 Ibid s 71B(2) (as added (see note 2 supra); amended by the Railways Act 2005 Sch 1 Pt 1 para 29(1)). The text refers to the Disabled Persons Transport Advisory Committee established under the Transport Act 1985 s 125 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 259).

As to transitional provisions regarding the code of practice see the Railways Act 2005 Sch 1 para 29(2), (3).

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B. PUBLIC SECTOR FUNDING

39. Financial assistance from the Secretary of State for railway purposes.

The Secretary of State¹ may provide, or agree to provide, financial assistance² to any person: (1) for the purpose of securing the provision, improvement or development of railway services³ or railway assets⁴; or (2) for any other purpose relating to a railway⁵ or to railway services⁶.

Agreements or other arrangements entered into by the Secretary of State for these purposes⁷ may be entered into on whatever terms, and subject to whatever conditions, he considers appropriate⁸. However, in exercising his powers⁹ for any purpose¹⁰ in relation to which powers are exercisable by the Welsh Ministers¹¹, the Secretary of State must have regard to the desirability of acting consistently with anything notified by them to him in relation to their provision of assistance for freight services¹²; and a power of the Secretary of State¹³ to enter into agreements or other arrangements (other than franchise agreements¹⁴) for a purpose set out in either head (1) or head (2) above may be exercised by his entering into an agreement or other arrangement with a relevant person¹⁵ in respect of services provided under a franchise agreement only where the agreement or arrangement is entered into in accordance with that franchise agreement¹⁶.

1 As to the general duties of the Secretary of State under the Railways Act 2005 see the Railways Act 1993 s 4 (as amended); and PARA 33 ante; and as to the Secretary of State see PARA 35 ante.

2 For these purposes, the provision of financial assistance includes each of the following: (1) the making of grants or loans (Railways Act 2005 s 6(2)(a)); (2) the giving of guarantees (s 6(2)(b)); and (3) investments in bodies corporate (s 6(2)(c)). For the meaning of 'body corporate' see PARA 7 note 4 ante; definition applied by s 58(2). As to the notification from the Secretary of State of assistance in exercise of his powers under s 6 for the purpose of securing freight services see PARA 41 post.

3 For the meaning of 'railway services' see PARA 82 post; definition applied by ibid s 58(2).

4 Ibid s 6(1)(a). For the meaning of 'railway asset' see PARA 83 note 7 post; definition applied by s 58(2).

5 In ibid s 6, 'railway' has its wider meaning (see PARA 82 note 2 post): s 6(7).

6 Ibid s 6(1)(b).

7 Ie under ibid s 6: see s 6(3).

8 Ibid s 6(3).

9 Ie under ibid s 6: see s 6(4).

10 Ie mentioned in ibid s 11(1) (see PARA 42 post): see s 6(4)(b).

11 Ibid s 6(4)(b). The text refers to powers exercisable by the Welsh Ministers (see PARA 35 ante) under s 10 (see PARA 40 post): see s 6(4)(b).

12 Ibid s 6(4). The text refers to anything notified to the Secretary of State by the Welsh Ministers (see PARA 35 ante) under s 11 (see PARA 42 post): see s 6(4).

13 Ie under ibid s 6 or otherwise: see s 6(5).

14 For the meaning of 'franchise agreement' see PARA 130 note 4 post; definition applied by *ibid* s 58(2).

15 For the purposes of *ibid* s 6(5), a person is a relevant person in relation to a franchise agreement if he is: (1) the franchise operator (s 6(6)(a)); (2) the franchisee (s 6(6)(b)); or (3) an employee, agent or independent contractor of the franchise operator or of the franchisee (s 6(6)(c)). For the meaning of 'franchise operator' see PARA 130 note 4 post; definition applied by s 58(2). For the meaning of 'franchisee' see PARA 130 note 4 post; definition applied by s 58(2).

Sums received by the Secretary of State by virtue of s 6 must be paid into the Consolidated Fund: s 55(2)(a). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

16 *Ibid* s 6(5).

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40. Franchising and financial assistance in relation to Wales.

Before issuing an invitation to tender for a franchise agreement¹ in a case in which the services to be provided under the agreement are or include Welsh services², or before entering into a franchise agreement in respect of services that are or include Welsh services in a case in which no such invitation has been issued³, the Secretary of State⁴ must consult the Welsh Ministers⁵. The Secretary of State may not enter into a franchise agreement relating to services that are or include Wales-only services⁶ unless the Welsh Ministers join with him as a party to the agreement⁷.

For the purposes of being a party to a franchise agreement⁸, the Welsh Ministers have power to provide, or to agree to provide, financial assistance⁹ to the franchisee¹⁰: (1) for the purpose of securing the provision, improvement or development of any Welsh services to which the agreement relates¹¹; or (2) for any other purpose relating to the provision of those services¹². The Welsh Ministers also have power, where they do so wholly or primarily for Welsh purposes¹³, to provide, or to agree to provide, financial assistance to persons otherwise than under franchise agreements¹⁴: (a) for the purpose of securing the provision, improvement or development of railway services or railway assets¹⁵; or (b) for any other purpose relating to a railway or to railway services¹⁶.

The Welsh Ministers may make payments to the Secretary of State in respect of the performance of his duty to provide (or to secure the provision of) services in the absence of a franchise¹⁷, in relation to a Welsh service¹⁸.

1 For the meaning of 'franchise agreement' see PARA 130 note 4 post; definition applied by the Railways Act 2005 s 58(2).

2 Ibid s 10(1)(a). For these purposes, 'Welsh service' means a railway passenger service which starts in Wales, ends in Wales or otherwise makes at least one scheduled call in Wales: ss 57(1), 58(1). For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by s 58(2). For the meaning of 'scheduled call' see PARA 85 note 14 post; definition applied by s 58(2). For the meaning of 'Wales' see PARA 29 note 3 ante.

3 Ibid s 10(1)(b).

4 As to the general duties of the Secretary of State under the Railways Act 2005 see the Railways Act 1993 s 4 (as amended); and PARA 33 ante; and as to the Secretary of State see PARA 35 ante.

5 Railways Act 2005 s 10(1). As to the Welsh Ministers see PARA 35 ante.

6 For these purposes, 'Wales-only service' means a railway passenger service which: (1) starts and ends in Wales and does not make any other scheduled calls outside Wales; and (2) has not been excluded from this definition by an order made by the Secretary of State: ibid ss 57(1), 58(1). Before making an order for the purposes of head (2) supra, the Secretary of State must consult the Welsh Ministers: s 57(2). An order for those purposes is subject to the negative resolution procedure: s 57(3). At the date at which this volume states the law, no such order had been made.

7 Ibid s 10(2).

8 Ie whether or not in a case falling within ibid s 10(2) (see the text and notes 6-7 supra): see s 10(3).

9 For the purposes of ibid s 10, the provision of financial assistance includes each of the following: (1) the making of grants or loans (s 10(7)(a)); (2) the giving of guarantees (s 10(7)(b)); and (3) investments in bodies

corporate (s 10(7)(c)). Agreements and other arrangements entered into by the Welsh Ministers under s 10(3) may be entered into on whatever terms, and subject to whatever conditions, they consider appropriate: s 10(8). For the meaning of 'body corporate' see PARA 7 note 4 ante; definition applied by s 58(2). As to the notification of assistance from the Welsh Ministers under s 10 in relation to freight services see PARA 42 post.

10 Ibid s 10(3). For the meaning of 'franchisee' see PARA 130 note 4 post; definition applied by s 58(2).

In exercising their powers under s 10 for any purpose mentioned in s 7(1) (financial assistance from Secretary of State for freight services: see PARA 41 post), the Welsh Ministers must have regard to the desirability of acting consistently with anything notified to them under s 7: s 10(9).

11 Ibid s 10(3)(a).

12 Ibid s 10(3)(b).

13 For these purposes, 'Welsh purposes' means any of the following:

- 38 (1) any purposes connected with a Welsh service or proposed Welsh service (ibid s 10(5)(a));
- 39 (2) the provision, improvement or development of services for the carriage of goods by railway where the services are to be or are provided wholly or partly in Wales (s 10(5)(b));
- 40 (3) the provision, improvement or development of facilities for use for or in connection with:
 - (a) the carriage of goods by railway using services that are to be or are provided wholly or partly in Wales (s 10(5)(c)(i)); or
 - (b) the loading or unloading of goods so carried or intended to be so carried (s 10(5)(c)(ii)).

For the purposes of s 10, 'railway' has its wider meaning (see PARA 82 note 2 post); and 'facilities' includes track, rolling stock, depots, access roads and equipment: s 10(12). As to the meaning of 'goods' see PARA 82 note 3 post; definition applied by s 58(2). For the meaning of 'rolling stock' see PARA 82 note 2 post; definition applied by s 58(2). For the meaning of 'track' see PARA 82 note 8 post; definition applied by s 58(2).

14 Ibid s 10(4). The power of the Welsh Ministers under s 10(4) may be exercised by their entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or other arrangement is entered into in accordance with that franchise agreement: s 10(10). For these purposes, a person is a relevant person in relation to a franchise agreement if he is: (1) the franchise operator (s 10(11)(a)); (2) the franchisee (s 10(11)(b)); or (3) an employee, agent or independent contractor of the franchise operator or of the franchisee (s 10(11)(c)). Agreements and other arrangements entered into by the Welsh Ministers under s 10(4) may be entered into on whatever terms, and subject to whatever conditions, they consider appropriate: s 10(8). For the meaning of 'franchise operator' see PARA 130 note 4 post; definition applied by s 58(2).

15 Ibid s 10(4)(a). For the meaning of 'railway asset' see PARA 83 note 7 post; definition applied by s 58(2). For the meaning of 'railway services' see PARA 82 post; definition applied by s 58(2).

16 Ibid s 10(4)(b).

17 Ie the duty under the Railways Act 1993 s 30 (as substituted and amended) (as to which see PARA 138 post): see the Railways Act 2005 s 10(6). The Welsh Ministers may make payments also to the Scottish Ministers in respect of their duty under the Railways Act 1993 s 30 (as substituted and amended): see the Railways Act 2005 s 10(6). As to the Scottish Ministers generally see PARA 124 note 7 post.

18 Ibid s 10(6). Sums received by the Secretary of State by virtue of s 10(6) must be paid into the Consolidated Fund: s 55(2)(b). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

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41. Notification of assistance from the Secretary of State for freight services.

If the Secretary of State¹ makes or modifies a scheme setting out how he proposes to exercise his powers of assistance for railway purposes² for the purpose of securing the provision, improvement or development of³:

- 131 (1) services for the carriage of goods⁴ by railway⁵; or
- 132 (2) facilities⁶ for or in connection with: (a) the carriage of goods by railway⁷; or (b) the loading or unloading of goods carried or intended to be carried by railway⁸,

the Secretary of State must send a copy of the scheme or (as the case may be) of the scheme as modified⁹ to the Welsh Ministers¹⁰.

1 As to the general duties of the Secretary of State under the Railways Act 2005 see the Railways Act 1993 s 4 (as amended); and PARA 33 ante; and as to the Secretary of State see PARA 35 ante.

2 As to his powers under the Railways Act 2005 s 6 (see PARA 39 ante); see s 7(1). The provisions of s 7 also apply if the Secretary of State makes or modifies a determination of the criteria that he will apply in exercising his functions under such a scheme: s 7(2). As to the meaning of 'functions' see PARA 7 note 12 ante; definition applied by s 58(2).

3 Ibid s 7(1).

4 As to the meaning of 'goods' see PARA 82 note 3 post; definition applied by ibid s 58(2).

5 Ibid s 7(1)(a). For the purposes of s 7, 'railway' has its wider meaning (see PARA 82 note 2 post): s 7(4).

6 For the purposes of ibid s 7, 'facilities' includes track, rolling stock, depots, access roads and equipment: s 7(4). For the meaning of 'rolling stock' see PARA 82 note 2 post; definition applied by s 58(2). For the meaning of 'track' see PARA 82 note 8 post; definition applied by s 58(2).

7 Ibid s 7(1)(b)(i).

8 Ibid s 7(1)(b)(ii).

9 As to a copy of the determination or (as the case may be) of the determination as modified (see note 2 supra): see ibid s 7(3).

10 Ibid s 7(3)(b). In exercising their powers under s 10 (see PARA 40 ante) for any purpose mentioned in s 7(1) (see the text and notes 1-8 supra), the Welsh Ministers must have regard to the desirability of acting consistently with anything notified to them under s 7: see s 10(9); and PARA 40 ante.

A copy as mentioned in the text must also be sent to the Scottish Ministers in the circumstances described: see s 7(3)(a). As to the Scottish Ministers generally see PARA 124 note 7 post.

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42. Notification of assistance from the Welsh Ministers for freight services.

If the Welsh Ministers¹ make or modify a scheme setting out how they propose to exercise their powers in relation to franchising and financial assistance² for the purpose of securing the provision, improvement or development of³:

133 (1) services for the carriage of goods⁴ by railway⁵; or

134 (2) facilities⁶ for or in connection with: (a) the carriage of goods by railway⁷; or (b) the loading or unloading of goods carried or intended to be carried by railway⁸,

the Welsh Ministers must send a copy of the scheme or (as the case may be) of the scheme as modified⁹ to the Secretary of State¹⁰.

1 As to the Welsh Ministers see PARA 35 ante.

2 I.e. their powers under the Railways Act 2005 s 10 (see PARA 40 ante); see s 11(1). The provisions of s 11 also apply if the Welsh Ministers make or modify a determination of the criteria that they will apply in exercising their functions under such a scheme: s 11(2). As to the meaning of 'functions' see PARA 7 note 12 ante; definition applied by s 58(2).

3 Ibid s 11(1).

4 As to the meaning of 'goods' see PARA 82 note 3 post; definition applied by ibid s 58(2).

5 Ibid s 11(1)(a). For the purposes of s 11, 'railway' has its wider meaning (see PARA 82 note 2 post): s 11(4).

6 For the purposes of ibid s 11, 'facilities' includes track, rolling stock, depots, access roads and equipment: s 11(4). For the meaning of 'rolling stock' see PARA 82 note 2 post; definition applied by s 58(2). For the meaning of 'track' see PARA 82 note 8 post; definition applied by s 58(2).

7 Ibid s 11(1)(b)(i).

8 Ibid s 11(1)(b)(ii).

9 I.e. or a copy of the determination or (as the case may be) of the determination as modified (see note 2 supra): see ibid s 11(3).

10 Ibid s 11(3). The Secretary of State, in exercising his powers for any purpose mentioned in s 11(1) (see the text and notes 1-8 supra) in relation to which powers are exercisable by the Welsh Ministers under s 10 (see PARA 40 ante), must have regard to the desirability of acting consistently with anything notified to him under s 11: see s 6(4); and see PARA 39 ante. As to the Secretary of State see PARA 35 ante.

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43. Assistance towards capital expenditure on public transport facilities.

The Secretary of State¹ or Welsh Ministers², as the case may be, may³ make grants upon such terms and conditions as they think fit to any person towards expenditure appearing to them to be of a capital nature incurred or to be incurred by that person for the purpose of the provision, improvement or development of facilities for public passenger transport in Great Britain⁴.

Any local authority⁵, or any two or more local authorities acting jointly, may make payments, upon such terms and conditions as they think fit, to any other person towards expenditure appearing to the authority or authorities in question to be of a capital nature incurred or to be incurred by that other person for the purpose of the provision, improvement or development of any facilities for public passenger transport if it appears to the authority or each of the authorities in question that those facilities are or will be of benefit to the area of that authority⁶. Where a relevant local authority⁷ proposes to make such payments⁸ in respect of any facilities, that authority may enter into an agreement with a national authority⁹ under which the national authority undertakes to exercise any of its functions¹⁰ in relation to railways or railway services, to refrain from exercising such functions, or to exercise such functions in a particular manner, in relation to the use of the facilities in question¹¹.

Where a person has used or proposes to use an asset of his for the purpose of the provision, improvement or development of facilities for public passenger transport, the Secretary of State or Welsh Ministers or, as the case may be, the local authority or local authorities in question may for the purposes above¹² treat as expenditure of a capital nature incurred or to be incurred by that person for that purpose such amount not exceeding the capital value of that asset as the Secretary of State or Welsh Ministers or, as the case may be, the local authority or authorities in question may determine to be appropriate¹³.

1 As to the Secretary of State see PARA 35 ante.

2 Functions of the Treasury and of the Secretary of State under the Transport Act 1968 s 56 (as amended), so far as they are exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (made under the Government of Wales Act 1998 s 22 (now repealed)) and thereafter to the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30: see PARA 35 ante.

3 I.e. with the approval of the Treasury in the case of the Secretary of State (see note 2 supra): see the Transport Act 1968 s 56(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

4 Transport Act 1968 ss 56(1), 159(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante. No grant may be made under s 56(1) for the purpose of the Channel Tunnel: see the Channel Tunnel Act 1987 s 2(3). As to the provision of financial assistance under the Railways Act 2005 see PARA 39 et seq ante. As to transport grants made to local authorities in any chargeable financial year see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 536.

The Transport Act 1968 s 56(1) is subject to s 56(3), (4) (as substituted and amended): see s 56(1). Accordingly, no grant under s 56(1) is to be made for the purposes of the provision, improvement or development of an airfield, a harbour, or (except when used or to be used for the purposes of a ferry service) a dock, pier or jetty: see s 56(3). However, nothing in s 56(3) precludes the making of grants under s 56(1) for the purposes of the provision, improvement or development of facilities for or in connection with public passenger transport by land to or from an airfield, harbour, dock, pier or jetty: s 56(3A) (added by the Railways Act 1993 s 138).

No grant under the Transport Act 1968 s 56(1) is to be made for any purpose unless the Secretary of State or Welsh Ministers, as the case may be, is (or are) satisfied that the provision, improvement or development of the facilities in question is appropriate in the light of:

- 41 (1) any general policies formulated by a Passenger Transport Authority under s 9A(1) or (5) (s 9A as added and amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 248) (s 56(4)(a) (s 56(4) substituted by the Transport Act 1985 s 139(2), Sch 7));
- 42 (2) any general policies formulated by a non-metropolitan county council under the Transport Act 1985 s 63(1) (as amended) (policies with respect to services to be secured to meet public transport requirements within the county: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1252) (Transport Act 1968 s 56(4)(b) (as so substituted); amended by the Local Government etc (Scotland) Act 1994 s 180(1), (2), Sch 13 para 80(7), Sch 14); and
- 43 (3) any measures adopted by such a council under the Transport Act 1985 s 63(6) (as amended) (measures for promoting co-ordination of services and convenience of the public in using services for their area: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1252) (Transport Act 1968 s 56(4)(c) (as so substituted)),

which are relevant to the need for facilities of the description in question in the locality in which they are, or are to be, provided: s 56(4) (as so substituted). As to passenger transport authorities see PARA 63 et seq post.

5 For the purposes of *ibid* s 56 (as amended), 'local authority' means: (1) the council of any county, or county district in England or Wales; (2) the council of a London borough or the Common Council of the City of London; (3) a metropolitan county passenger transport authority; (4) the Council of the Isles of Scilly: s 56(6) (amended by the Local Government Act 1972 s 272(1), Sch 30; the London Regional Transport Act 1984 s 71(3) (b), Sch 7; the Local Government Act 1985 s 39, Sch 12 para 3; and the Local Government etc (Scotland) Act 1994 Sch 13 para 80(7)). For the meanings of 'England' and 'Wales' see the Transport Act 1968 s 159(1); and PARA 29 note 3 ante. As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to London boroughs and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

6 Transport Act 1968 s 56(2). See also *R (on the application of Merseyside Passenger Transport Authority) v Secretary of State for Transport* [2006] All ER (D) 111 (Feb) (the Secretary of State had not breached any legitimate expectation by withdrawing a grant towards capital expenditure for the purpose of providing a light rail scheme given the local authority's failure to provide the assurances requested regarding cost overruns).

The Transport Act 1968 s 56(2) is subject to s 56(3), (4) (as substituted and amended): see s 56(2). Accordingly, no payment under s 56(2) is to be made for the purposes of the provision, improvement or development of an airfield, a harbour, or (except when used or to be used for the purposes of a ferry service) a dock, pier or jetty: see s 56(3). However, nothing in s 56(3) precludes the making of payments under s 56(2) for the purposes of the provision, improvement or development of facilities for or in connection with public passenger transport by land to or from an airfield, harbour, dock, pier or jetty: see s 56(3A) (as added: see note 4 supra). No payment under s 56(2) is to be made for any purpose unless the local authority or local authorities in question are satisfied that the provision, improvement or development of the facilities in question is appropriate in the light of the circumstances set out in s 56(4) (as substituted and amended): see s 56(4) (as substituted and amended: see note 4 supra).

7 For the purposes of *ibid* s 56(2A) (as added), 'relevant local authority' means: (1) a non-metropolitan county or district council in England or in Wales; (2) a London borough council or the Common Council of the City of London; or (3) a council constituted under the Local Government etc (Scotland) Act 1994 s 2 (as amended); and any reference to a relevant local authority is to be taken to include a reference to any two or more such authorities acting jointly: see the Transport Act 1968 s 56(2B) (s 56(2B) added by the Railways Act 1993 s 138; definition of 'relevant local authority' amended by the Local Government etc (Scotland) Act 1994 Sch 13 para 80(7)).

8 *Ie* under the Transport Act 1968 s 56(2) (see the text and notes 5-6 supra): see s 56(2A) (as added: see note 11 infra).

9 For the purposes of *ibid* s 56(2A) (as added), 'national authority' means the Secretary of State, the Scottish Ministers or the Welsh Ministers (see PARA 35 ante): s 56(2B) (s 56(2B) as added (see note 7 supra); definition of 'national authority' added by the Railways Act 2005 s 59(1), Sch 12 para 2(1), (4)(b)). As to the Scottish Ministers generally see PARA 124 note 7 post.

10 For these purposes, 'functions' includes powers, duties and obligations: Transport Act 1968 s 159(1).

11 *Ibid* s 56(2A) (added by the Railways Act 1993 s 138; amended by the Railways Act 2005 Sch 12 para 2(1), (3)).

12 le for the purposes of the Transport Act 1968 s 56 (as amended): see s 56(5).

13 See *ibid* ss 56(5), 159(1).

UPDATE

43 Assistance towards capital expenditure on public transport facilities

NOTE 4--Head (1). Transport Act 1968 s 56(4)(a) amended: Local Transport Act 2008 Sch 4 para 12(2).

NOTE 5--Head (3). Reference to a metropolitan county passenger transport authority is now to an Integrated Transport Authority for an integrated transport area in England: Transport Act 1968 s 56(6) (amended by the Local Transport Act 2008 Sch 4 para 12(2)). Definition of 'local authority' in Transport Act 1968 s 56(6) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 6.

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(iii) Statutory Bodies, etc

A. HISTORICAL CONTEXT

44. Establishment and abolition of the British Railways Board.

With effect from 1 January 1963, the British Railways Board, one of four new boards created by the Transport Act 1962, was vested with the property, rights and liabilities comprised in the part of the British Transport Commission's undertaking which constituted the Commission's railway system, except for the London system, which passed to another new board, the London Transport Board¹.

Under the Transport Act 2000², the Secretary of State has power: (1) by order made by statutory instrument to reduce the membership of the British Railways Board to a chairman and one or more other persons appointed by the Secretary of State³; and (2) by notice in writing to remove from office any member of the Board or vary the terms of his appointment⁴. When, after consulting the Board, the Secretary of State considers that it is no longer necessary for the Board to continue to exist, he must by order made by statutory instrument provide for its dissolution⁵.

1 See the Transport Act 1962 s 1 (repealed); and PARA 4 ante.

2 Provision was made under the Transport Act 2000 for the Strategic Rail Authority to assume the functions and associated property, rights and liabilities of the British Railways Board in relation to the British Transport Police (see s 217(1), Sch 18 (Sch 18 now largely repealed)) and for other property, rights and liabilities of the Board to be transferred to that same Authority (see s 218, Sch 19 (both now repealed)). At the same time, provision was made for the transfer to the Secretary of State of the Board's remaining property, rights and liabilities: see s 240, Sch 25 (Sch 25 amended by the Railways Act 2005 s 59(1), (6), Sch 12 para 17(1), (8), Sch 13 Pt 1). As to the carrying into effect of the Transport Act 2000 ss 217-218, 240, Schs 18-19, 25 (as amended) see further s 241(1), (2). The Strategic Rail Authority is now abolished (see PARA 46 post) and the British Transport Police have been put onto a statutory footing (see PARA 281 et seq post). As to the Secretary of State see PARA 35 ante.

Provision was made as to the taxation of various transfers involving the Strategic Rail Authority by s 250, Sch 26 (Sch 26 amended by the Capital Allowances Act 2001 ss 578, 580, Sch 2 para 109, Sch 4; and the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 32). See also the Strategic Rail Authority (Capital Allowances) Order 2001, SI 2001/262, which made provision relating to the expenditure which the Strategic Rail Authority, for the purposes of capital allowances under the Corporation Tax Acts, is to be taken as having incurred on certain plant and machinery which was transferred to it under provisions in the Transport Act 2000 Pt IV (ss 201-254) (as amended).

3 Ibid s 241(3)(a). In exercise of the power so conferred the Secretary of State has made the British Railways Board (Reduction of Membership) Order 2001, SI 2001/217, which provided that the membership of the British Railways Board was to consist of a chairman and one or more other persons appointed by the Secretary of State: see art 2. The Transport Act 1962 had provided for the British Railways Board to consist of a chairman and not more than 15 nor less than nine other members: see s 1(3) (repealed).

4 Transport Act 2000 s 241(3)(b). As to compensation that may be payable by virtue of s 241(3)(b) see s 241(5).

5 Ibid s 241(4). At the date at which this volume states the law, no such order had been made. However, where an order under s 241(4) provides for the Board to be dissolved with effect from a time which would not, apart from s 241(6), be the end of its financial year, the financial year of the Board which is current at that time

is deemed to end with its dissolution: s 241(6). An order under s 241(4) which so provides may contain such provision as the Secretary of State considers appropriate (including provision modifying the effect of any enactment) for the Board or the Authority to prepare accounts for the final financial year of the Board, and to make and lay before Parliament a report relating to the carrying out of the Board's functions during that financial year: s 241(7).

As to compensation that may be payable by virtue of s 241(4) see s 241(5).

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45. Establishment and abolition of the Director of Passenger Rail Franchising.

Under the Railways Act 1993, the Secretary of State¹ had a duty to appoint an officer known as the 'Director of Passenger Rail Franchising' ('the Franchising Director')² for the purpose of carrying out the functions assigned or transferred to the Franchising Director by or under the 1993 Act³.

The Transport Act 2000 established the Strategic Rail Authority and abolished the office of the Director of Passenger Rail Franchising⁴, whose property, rights and liabilities were assumed by that Authority⁵.

1 As to the Secretary of State see PARA 35 ante.

2 The general duties of the Franchising Director were set out in the Railways Act 1993 s 5 (repealed).

3 See *ibid* s 1(1), (5) (repealed). Provision was made under s 1(6), Sch 1 (repealed) for the office of the Franchising Director (and of the Rail Regulator, which was established at the same time: see PARA 47 post).

The Franchising Director's principal function was to franchise the provision of railway passenger services in Great Britain that were formerly operated by the British Railways Board (as to which see PARA 44 ante). The franchising of passenger services was set out under ss 23-36 (as originally enacted) and closures affecting such services under ss 37-50 (as originally enacted). Supplementary powers, including powers of enforcement, were conferred on the Franchising Director by ss 51-58, 73, 75, 80 (as originally enacted). Most of these provisions still apply but they have been amended to reflect the transfers of the Franchising Director's consumer protection functions to the Office of Rail Regulation and of his financial and other functions to the Secretary of State: see PARAS 35 ante, 47 post.

4 The functions of the Franchising Director were transferred to the Strategic Rail Authority: see the Transport Act 2000 s 215(1), Sch 16 (Sch 16 amended by the Railways Act 2005 s 59(6), Sch 13 Pt 1; and by the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003, SI 2003/1400, art 7, Sch 5). The Strategic Rail Authority is now abolished: see PARA 46 post.

5 See the Transport Act 2000 s 215(2). Provision was made as to the taxation of various transfers involving the Strategic Rail Authority by s 250, Sch 26 (Sch 26 amended by the Capital Allowances Act 2001 ss 578, 580, Sch 2 para 109, Sch 4; and the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 32). See also the Strategic Rail Authority (Capital Allowances) Order 2001, SI 2001/262, which made provision relating to the expenditure which the Strategic Rail Authority, for the purposes of capital allowances under the Corporation Tax Acts, is to be taken as having incurred on certain plant and machinery which was transferred to it under provisions in the Transport Act 2000 Pt IV (ss 201-254) (as amended).

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46. Establishment and abolition of the Strategic Rail Authority.

A corporate body known as the 'Strategic Rail Authority' was established under the Transport Act 2000¹, which also made provision for the abolition of the British Railways Board² and of the office of the Director of Passenger Rail Franchising³. At the same time, provision was made for the transfer to the Authority of certain functions, rights and liabilities of the Franchising Director and of the British Railways Board⁴.

Under the Railways Act 2005, provision was made for the transfer or abolition of the functions of the Strategic Rail Authority, preparatory to the Authority's abolition, as follows⁵:

- 135 (1) the transfer to the Office of Rail Regulation⁶ of consumer protection and other functions relating to licensing⁷;
- 136 (2) certain transfers to the Secretary of State (and devolved authorities) relating to the provision, improvement or development of railway facilities⁸;
- 137 (3) the transfer to the Secretary of State (and devolved authorities) of certain functions relating to access agreements⁹;
- 138 (4) the transfer to the Secretary of State (and devolved authorities) of functions relating to franchise agreements¹⁰;
- 139 (5) the transfer to the relevant franchising authority of functions as the operator of last resort¹¹;
- 140 (6) the transfer etc to the Secretary of State (and devolved authorities) of certain functions relating to enforcement¹²;
- 141 (7) the abolition of the Authority's functions relating to railway administration orders¹³;
- 142 (8) the abolition of the Authority's duty to investigate contravention of consumer protection conditions¹⁴;
- 143 (9) the transfer to the Secretary of State of the function of maintaining a code of practice for the protection of disabled rail users¹⁵;
- 144 (10) the transfer to the Secretary of State of functions relating to maintenance of the register previously maintained by the Authority¹⁶;
- 145 (11) the transfer to the Secretary of State of certain functions relating to the Rail Passengers' Council¹⁷;
- 146 (12) the transfer to the Secretary of State (and devolved authorities) of the power to require information from licence holders¹⁸;
- 147 (13) the abolition of the Authority's functions relating to penalty fares¹⁹;
- 148 (14) the transfer to the Secretary of State (and devolved authorities) of functions relating to concessionary travel²⁰;
- 149 (15) the abolition of certain of the Authority's powers in relation to providing railway services²¹, substitute bus and taxi services²² and making bye-laws²³.

Provision was also made under the Railways Act 2005 in relation to schemes for the transfer of property, rights and liabilities, either from the Strategic Rail Authority or from a company wholly owned by that Authority, to specified persons (or to two or more of those persons)²⁴. Before making any such scheme, the Secretary of State had a duty to consult every person to whom property, rights or liabilities would be transferred under the proposed scheme²⁵. Where, after consulting the Strategic Rail Authority, the Secretary of State was satisfied that all such

transfers had been provided for in order to secure that the dissolution of the Authority would not extinguish any of its liabilities, and that it was no longer necessary, for any other reason, for that Authority to continue to exist, the Secretary of State had power by order to provide for it to cease to exist²⁶.

1 See the Transport Act 2000 s 201(1) (repealed). The Authority was not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and its property was not to be regarded as property of, or held on behalf of, the Crown: see s 201(2) (repealed). Provision as to the membership etc of the Strategic Rail Authority was made under ss 202-204, Sch 14 (repealed); and its main purposes, strategies and functions were set out under ss 205-211, 213-214, Sch 15 (repealed). Section 212 made relevant amendments to the Railways Act 1993 ss 18, 23, 26, 30 which still stand in substance, albeit subject to further amendment so that references to the Authority are repealed.

2 See PARA 44 ante.

3 See PARA 45 ante.

4 See PARAS 44, 45 ante.

5 Provision for the transfer etc of the functions of the Strategic Rail Authority is made by the Railways Act 2005 s 1(1), Sch 1.

6 As to the general duties of the Office of Rail Regulation see the Railways Act 1993 s 4 (as amended); and PARA 33 ante; and as to the Office of Rail Regulation see PARA 49 et seq post.

7 See the Railways Act 2005 Sch 1 paras 1-10. The transfer mentioned in head (1) in the text is effected by means of amendments made to, and provision made in relation to, the Railways Act 1993 ss 7-8, 11-15C (as amended) (licensing and modification of licences: see PARA 83 et seq post).

8 See the Railways Act 2005 Sch 1 para 11. The transfers mentioned in head (2) in the text are effected by means of amendments made to the Railways Act 1993 ss 16A-16G (as added and amended) (directions to provide, improve or develop railway facilities: see PARA 165 et seq post).

9 See the Railways Act 2005 Sch 1 para 12. The transfer mentioned in head (3) in the text is effected by means of amendments made to the Railways Act 1993 ss 17-19 (as amended) (directions regarding access contracts: see PARA 103 et seq post).

10 See the Railways Act 2005 Sch 1 paras 13-19. The transfer mentioned in head (4) in the text is effected by means of amendments made to, and provision made in relation to, the Railways Act 1993 ss 23-29 (as amended) (franchising of passenger services: see PARA 130 et seq post).

11 See the Railways Act 2005 Sch 1 para 20. The transfer mentioned in head (5) in the text is effected by means of amendments made to the Railways Act 1993 s 30 (as substituted and amended) (operator of last resort to provide or secure provision of service where no franchise agreement: see PARA 138 post).

12 See the Railways Act 2005 Sch 1 paras 21-26. The transfer mentioned in head (6) in the text is effected by means of amendments made to, and provision made in relation to, the Railways Act 1993 ss 55-58 (as amended) (enforcement by the Regulator etc) (see PARA 179 et seq post).

13 See the Railways Act 2005 Sch 1 para 27. The abolition mentioned in head (7) in the text is effected by means of amendments made to, and provision made in relation to, the Railways Act 1993 ss 59-62, Schs 6-7 (as amended) (see PARA 187 et seq post).

14 See the Railways Act 2005 Sch 1 para 28. The abolition mentioned in head (8) in the text is effected by means of the repeal of the Railways Act 1993 s 71A (now repealed).

15 See the Railways Act 2005 Sch 1 para 29. The transfer mentioned in head (9) in the text is effected by means of amendments made to, and provision made in relation to, the Railways Act 1993 s 71B (as added and amended) (see PARA 38 ante).

16 See the Railways Act 2005 Sch 1 para 30. The transfer mentioned in head (10) in the text is effected by means of amendments made to, and provision made in relation to, the Railways Act 1993 s 73 (as amended) (see PARA 37 ante).

17 See the Railways Act 2005 Sch 1 para 32. The transfer mentioned in head (11) in the text is effected by means of amendments made to the Railways Act 1993 s 76 (as amended) (see PARA 72 post).

18 See the Railways Act 2005 Sch 1 para 33. The transfer mentioned in head (12) in the text is effected by means of amendments made to the Railways Act 1993 s 80 (as amended) (see PARA 34 ante).

19 See the Railways Act 2005 Sch 1 para 34. The transfer mentioned in head (13) in the text is effected by means of amendments made to the Railways Act 1993 s 130 (as amended) (see PARA 396 post).

20 See the Railways Act 2005 Sch 1 para 35. The transfer mentioned in head (14) in the text is effected by means of amendments made to the Railways Act 1993 s 135 (as amended) (see PARA 137 post).

21 See the Railways Act 2005 Sch 1 para 36(a). The abolition mentioned in head (15) in the text in relation to providing railway services is effected by means of the repeal of the Transport Act 2000 s 213 (now repealed).

22 See the Railways Act 2005 Sch 1 para 36(b). The abolition mentioned in head (15) in the text in relation to substitute bus and taxi services is effected by means of the repeal of the Transport Act 2000 s 214 (now repealed).

23 See the Railways Act 2005 Sch 1 para 36(c). The abolition mentioned in head (15) in the text in relation to making bye-laws is effected by means of the repeal of the Transport Act 2000 s 219 (now repealed).

24 See the Railways Act 2005 s 1(2), (6), Sch 2; and as to the provisions about transfer schemes contained in Sch 2 (as they are applied in relation to a transfer scheme under s 12) see PARA 140 et seq post. The persons specified as mentioned in the text are: (1) the Secretary of State (s 1(3)(a)); (2) the Scottish Ministers (s 1(3)(b)); (3) the Welsh Ministers (see PARA 35 ante) (s 1(3)(c)); (4) the Office of Rail Regulation (s 1(3)(d)); (5) the Rail Passengers' Council established by s 19(1) (see PARA 68 post) (s 1(3)(e)); and (6) a company which is wholly owned by a person falling within any of heads (1) to (4) supra or is jointly owned by more than one of them (s 1(3)(f)). Further to head (2) supra only, see s 1(4). As to the Scottish Ministers generally see PARA 124 note 7 post. For these purposes, a company is wholly owned by a person at any time when it has no members other than one or more persons falling within the following paragraphs: (a) that person (s 58(4)(a)); (b) a company which is wholly owned by that person (s 58(4)(b)); (c) a person acting on behalf of that person or of such a company (s 58(4)(c)). A company is jointly owned by two or more persons (the 'relevant persons') at any time when (without being wholly owned by a person) it has no members other than two or more persons falling within the following paragraphs: (i) the relevant persons (s 58(5)(a)); (ii) a company which is jointly owned by two or more of the relevant persons or which is wholly owned by one of them (s 58(5)(b)); (iii) a person acting on behalf of one or more of the relevant persons or of such a company (s 58(5)(c)).

As to taxation provisions made in relation to transfer schemes under s 1(2) see s 53, Sch 10. As to provision made in relation to the protection of railway industry pensions in consequence of, or in consequence of any scheme made under, s 1 see s 1(8), (9); and PARA 6 ante.

25 See *ibid* s 1(5).

26 See *ibid* s 1(10). The Secretary of State, in exercise of the powers conferred upon him by s 1(10), made the Railways (Abolition of the Strategic Rail Authority) Order 2006, SI 2006/2925, which came into force on 1 December 2006 and provided for the Strategic Rail Authority to cease to exist: see arts 1-2.

As to provisions preparatory to the abolition of the Strategic Rail Authority see the Railways Act 2005 s 1(7).

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47. Establishment and abolition of the Rail Regulator and transfer of functions to the Office of Rail Regulation.

Under the Railways Act 1993, the Secretary of State¹ had a duty to appoint an officer known as 'the Rail Regulator' ('the Regulator')² for the purpose of carrying out the functions assigned or transferred to the Regulator by or under the 1993 Act³.

Certain functions of the Rail Regulator were transferred to the Strategic Rail Authority⁴, and the property, rights and liabilities associated with those functions were assumed by that Authority⁵.

The office of the Rail Regulator was abolished by the Railways and Transport Safety Act 2003⁶ and the Rail Regulator's functions, along with all property, rights and liabilities to which the Rail Regulator was entitled or subject, were transferred to the Office of Rail Regulation⁷, which was established under the 2003 Act⁸.

1 As to the Secretary of State see PARA 35 ante.

2 The general duties of the Rail Regulator were set out in the Railways Act 1993 s 4 (as originally enacted). These general duties are now assigned to the Office of Rail Regulation: see s 4 (as amended); and PARA 33 ante.

3 See *ibid* s 1(1) (repealed). Provision was made under s 1(6), Sch 1 (repealed) for the office of the Rail Regulator (and of the Director of Passenger Rail Franchising, which was established at the same time: see PARA 45 ante). The primary functions of the (singular) Rail Regulator, which included the granting and enforcing of licences, the approval of access agreements, initial decisions on closures and the enforcement of competition law, are now performed by the (corporate) Office of Rail Regulation: see PARA 49 et seq post.

4 *Ie* the Authority which was established under the Transport Act 2000 (but is now abolished): see PARA 46 ante. The principal functions referred to in the text were consumer protection and other functions relating to licensing.

5 See the Transport Act 2000 s 216 (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 2 para 19(t)(ii)), the Transport Act 2000 Sch 17 Pt I (paras 1-16) (amended by the Railways Act 2005 s 59(6), Sch 13 Pt 1) (amendments to provisions governing licensing) and the Transport Act 2000 Sch 17 Pt II (paras 17-28) (amended by the Railways Act 2005 Sch 13 Pt 1) (further amendments relating to non-licensing functions). Provision was made as to the taxation of various transfers involving the Strategic Rail Authority by the Transport Act 2000 s 250, Sch 26 (Sch 26 amended by the Capital Allowances Act 2001 ss 578, 580, Sch 2 para 109, Sch 4; and the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 32). See also the Strategic Rail Authority (Capital Allowances) Order 2001, SI 2001/262, which made provision relating to the expenditure which the Strategic Rail Authority, for the purposes of capital allowances under the Corporation Tax Acts, is to be taken as having incurred on certain plant and machinery which was transferred to it under provisions in the Transport Act 2000 Pt IV (ss 201-254) (as amended).

6 *Ie* effective from 5 July 2004: see the Railways and Transport Safety Act 2003 s 16(4); and the Railways and Transport Safety Act 2003 (Commencement No 2) Order 2004, SI 2004/827, art 4(b).

7 See the Railways and Transport Safety Act 2003 s 16(1)-(3). The provisions regarding transfer became effective on the coming into force of s 16, *ie* with effect from 5 July 2004: see s 16(3), 120(1); and the Railways and Transport Safety Act 2003 (Commencement No 2) Order 2004, SI 2004/827, art 4. Consequential amendments were made by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 (amended by the Railways Act 2005 Sch 13 Pt 1) and savings etc made by the Railways and Transport Safety Act 2003 Sch 3 (amended by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 2(4), Sch 1 Pt 1 para 7).

8 See the Railways and Transport Safety Act 2003 s 15, Sch 1; and PARA 50 et seq post.

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48. Dissolution of Rail Passengers' Committees and establishment of the Council as a national body.

On 24 July 2005¹, the Rail Passengers' Committees² ceased to exist³. However, provision was made for the London Transport Users' Committee⁴ to continue to have functions it previously had by virtue of being treated as a Rail Passengers' Committee⁵.

On 24 July 2005⁶, the council known as the Rail Passengers' Council that was established by the Railways Act 1993⁷ ceased to exist⁸; and references in enactments, instruments and other documents to the Rail Passengers' Council as so established have effect from that date⁹ as references to the Council established by the Railways Act 2005¹⁰.

1 le the day appointed for the commencement of the Railways Act 2005 s 21(1) (see the Railways Act 2005 (Commencement No 2) Order 2005, SI 2005/1909, art 2, Schedule): see the Railways Act 2005 s 21(1).

2 le the Rail Passengers' Committees established under the Railways Act 1993 s 2(2) (repealed): see the Railways Act 2005 s 21(1). Formerly, the Rail Passengers' Committees had been named the Rail Users' Consultative Committees: see the Transport Act 2000 s 227 (now repealed).

3 Railways Act 2005 s 21(1). As to provisions in connection with or in anticipation of the abolition of a Rail Passengers' Committee see s 21(4), (5). The abolition of the (regional) Rail Passengers' Committees thereby abolished the former federal structure of the Rail Passengers' Council: see note 7 infra.

4 As to the London Transport Users' Committee see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 322 et seq.

5 See the Railways Act 2005 s 21(3), Sch 6, which has effect by way of amendments to the Greater London Authority 1999: see, in particular, ss 252A-252E (added by the Railways Act 2005 Sch 6 paras 2-4). The Greater London Authority Act 1999 s 252C(3) (as added) is applied, subject to certain modifications, in relation to holders of European licences and to Statements of National Regulatory Provisions (SNRPs) (as to which see PARA 93 et seq post): see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 19(1); and PARA 98 post.

6 le on the day appointed for the commencement of the Railways Act 2005 s 19(6) (see the Railways Act 2005 (Commencement No 2) Order 2005, SI 2005/1909, art 2, Schedule): see the Railways Act 2005 s 19(6).

7 le the Rail Passengers' Council that was established by the Railways Act 1993 s 3(2) (repealed) with a federal structure consisting of the (regional) Rail Passengers' Committees (now abolished: see the text and notes 1-5 supra): see the Railways Act 2005 s 19(6). Formerly, the Rail Passengers' Council had been named the Central Rail Users' Consultative Committee: see the Transport Act 2000 s 227 (now repealed).

8 Railways Act 2005 s 19(6).

9 le from 24 July 2005, being the day appointed for the commencement of ibid s 19(7) (see the Railways Act 2005 (Commencement No 2) Order 2005, SI 2005/1909, art 2, Schedule): see the Railways Act 2005 s 19(7).

10 Ibid s 19(7). The text refers to the body corporate known as the Rail Passengers' Council established by s 19(1) (see s 19(1), (7); and PARA 68 post), which was thereby recast as a national body with the dissolution of the former federal structure of the Rail Passengers' Committees (see the text and notes 1-5 supra).

As to provisions in connection with or in anticipation of the establishment of the Rail Passengers' Council by s 19(1) see s 19(8), (9).

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B. OFFICE OF RAIL REGULATION

(A) OVERVIEW

49. Overview of the Office of Rail Regulation.

The Office of Rail Regulation is the combined safety and economic regulator for the national rail network in Great Britain for the purposes of both domestic and European law¹. The Office has statutory functions and statutory duties conferred on it².

Its primary functions include:

- 150 (1) health and safety functions relating to railways³;
- 151 (2) consumer protection and other functions relating to the issue, modification and enforcement of licences to operate trains, networks, stations and light maintenance depots⁴;
- 152 (3) the approval of contracts which provide for access to railway facilities (track, stations and light maintenance depots) and directing compulsory third party access (including connections) to railway facilities⁵;
- 153 (4) ratifying proposals on network and service modifications referred to it by the national authority⁶;
- 154 (5) the exercise of powers under competition law, concurrent with the Office of Fair Trading, in relation to services relating to railways, in order to stop anti-competitive agreements and concerted practices and behaviour amounting to the abuse of a dominant market position⁷;
- 155 (6) the approval and direction of changes to the key central codes that establish common rules and procedures for the railway industry⁸;
- 156 (7) determining appeals in certain legal and regulatory disputes⁹.

The Office of Rail Regulation has a general duty to exercise the functions assigned or transferred to it in the manner which it considers best calculated to achieve a variety of aims which are calculated to serve the public interest¹⁰.

¹ The Office of Rail Regulation is a corporate body with a board structure in keeping with other independent economic regulators (eg the Office of Fair Trading: see COMPETITION vol 18 (2009) PARA 6 et seq): see PARA 50 et seq post.

² The Office of Rail Regulation has more than 20 statutory functions (ie powers given to it to discharge its duties), including functions consequent on its status as regulatory body for the purposes of EU legislation: see PARAS 31 et seq ante, 53 et seq post. The Office's main general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended) and the Railways Act 2005, are set out in the Railways Act 1993 s 4 (as amended) (see the text and note 10 infra) but it has one overriding duty under the Channel Tunnel Rail Link Act 1996 s 21 and another duty under the London Olympic Games and Paralympic Games Act 2006 s 17 (see PARA 33 ante). The Office achieves the objectives of its duties also means of control associated with its statutory powers, such as the conditions imposed via network licences (see head (2) in the text) and the Network Code (see head (6) in the text).

³ ie functions conferred by or under the Health and Safety at Work etc Act 1974, including securing the proper construction and safe operation of the railways; securing the proper construction and safe operation of

trains and other vehicles used on railways; protecting the public (passengers and non-passengers alike) from risks arising from the operation of railways; and protecting railway workers from injury and other health and safety risks: see PARA 196 et seq post. As to the Office of Rail Regulation's role as Safety Authority for the purposes of relevant European law see PARA 228 et seq post.

4 See PARAS 83 et seq, 179 et seq post; and as to the Office of Rail Regulation's designation as the body responsible for issuing European licences see PARA 94 et seq post.

The function described under head (2) in the text includes the power to direct an operator to provide, improve or develop railway facilities (see PARA 165 et seq post) and regulation of the owner of the national rail network infrastructure, including setting and reviewing its access charges, establishing certain standards in relation to the national railway network; and enforcing the conditions set out in network licences (see PARA 171 et seq post).

5 See PARA 102 et seq post.

6 See PARA 157 et seq post.

7 See PARAS 62 et seq, 186 et seq post.

8 The primary among these codes is the Network Code (17 October 2007) (formerly the Railtrack Track Access Conditions): see PARA 102 et seq post.

9 See PARA 59 post.

10 As to the general duties of the Office of Rail Regulation under the Railways Act 1993 Pt I (as amended) and the Railways Act 2005 see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. These duties have effect, subject to minor modifications, for the purposes of the provisions which govern access to and the management of the railway infrastructure: see PARA 60 post.

As to the duty of the Office of Rail Regulation to provide information and advice to the Secretary of State, the Scottish Ministers and the Welsh Ministers in connection with their railway functions see PARA 58 post.

UPDATE

49 Overview of the Office of Rail Regulation

NOTE 2--Channel Tunnel Rail Link Act 1996 s 21 amended: Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 s 3. As to the power of the Office of Rail Regulation to charge fees in relation to the rail link, see the Channel Tunnel Rail Link Act 1996 s 21A (added by the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 s 4). As to the meaning of 'rail link' see PARA 114 NOTE 12.

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(B) CONSTITUTION, ETC

50. Constitution of the Office of Rail Regulation and delegation of functions.

The body corporate known as the Office of Rail Regulation¹ consists of a chairman and at least four other members appointed by the Secretary of State².

The chairman or another member:

- 157 (1) may not be appointed for a term of more than five years (but may be reappointed)³;
- 158 (2) may resign by notice in writing to the Secretary of State⁴; and
- 159 (3) is to hold and vacate office in accordance with the terms of his appointment⁵.

The Secretary of State may dismiss a member of the Office of Rail Regulation by notice in writing on the grounds that the member:

- 160 (a) has been absent from meetings without permission of the Office during a period of more than three months⁶;
- 161 (b) has a financial or other personal interest which is likely to influence the performance of his functions as a member⁷;
- 162 (c) is the subject of a bankruptcy restrictions order (or interim order)⁸;
- 163 (d) has had his estate sequestrated in Scotland or, under Scots law, has made a composition or arrangement with, or granted a trust deed for, his creditors⁹;
- 164 (e) has misbehaved¹⁰; or
- 165 (f) is unable, unfit or unwilling to perform his functions as a member¹¹.

The Office of Rail Regulation must appoint a Chief Executive¹² but, before doing so, the Office must consult the Secretary of State¹³ and obtain the Treasury's approval of the terms and conditions of appointment¹⁴. The Office of Rail Regulation may appoint other employees¹⁵, but this power may be exercised only if the Office also has the approval of the Treasury as to both numbers¹⁶ and terms and conditions of employment¹⁷.

The Office of Rail Regulation may establish one or more committees¹⁸, and may delegate a function¹⁹ either to the Chief Executive (or another employee)²⁰ or to a committee²¹.

1 See the Railways and Transport Safety Act 2003 s 15(1); and PARA 47 ante.

The Office of Rail Regulation is subject to investigation by the Parliamentary Commissioner for Administration: see the Parliamentary Commissioner Act 1967 s 4(1) (as substituted), Sch 2 (as substituted and amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43. The Office of Rail Regulation is also a designated body for the purposes of the Government Resources and Accounts Act 2000 and is therefore required to prepare and present to the Treasury such financial information in relation to the financial year as the Treasury requires to enable it to prepare Whole of Government Accounts: see the Government Resources and Accounts Act 2000 s 10(1); the Whole of Government Accounts (Designation of Bodies) Order 2007, SI 2007/1492, art 2, Schedule; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 Railways and Transport Safety Act 2003 s 15(2), Sch 1 para 1(1). Before appointing a member other than the chairman, the Secretary of State must consult the chairman: Sch 1 para 1(3). As to the Secretary of State see PARA 35 ante. As to financial provision made in relation to members of the Office of Rail Regulation see PARA 52 post.

All members for the time being of the Office of Rail Regulation are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (as amended); and PARLIAMENT vol 78 (2010) PARA 908.

3 Railways and Transport Safety Act 2003 Sch 1 para 1(2)(a).

4 Ibid Sch 1 para 1(2)(b).

5 Ibid Sch 1 para 1(2)(c).

6 Ibid Sch 1 para 2(a).

7 Ibid Sch 1 para 2(b). Before appointing a person as a member of the Office of Rail Regulation, the Secretary of State must satisfy himself that the person neither has nor is expected to acquire a financial or other personal interest which is likely to influence the performance of his functions as a member (Sch 1 para 17(1)); and, from time to time, the Secretary of State must satisfy himself that no member of the Office has a financial or other personal interest which is likely to influence the performance of his functions as a member (Sch 1 para 17(2)).

8 Ibid Sch 1 para 2(c). As to bankruptcy restrictions orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

9 Ibid Sch 1 para 2(d).

10 Ibid Sch 1 para 2(e).

11 Ibid Sch 1 para 2(f).

12 Ibid Sch 1 para 3(1).

13 Ibid Sch 1 para 3(2)(a).

14 Ibid Sch 1 para 3(2)(b).

15 Ibid Sch 1 para 4(1). Service as an employee of the Office of Rail Regulation is employment in the civil service of the State: Sch 1 para 5. As to financial provision made in relation to employees of the Office see PARA 52 post.

16 Ibid Sch 1 para 4(2)(a).

17 Ibid Sch 1 para 4(2)(b).

18 Ibid Sch 1 para 6. The committee or committees referred to in the text may include persons who are neither members of nor employed by the Office of Rail Regulation: see Sch 1 para 6. As to financial provision made in relation to committee members see PARA 52 post.

19 Ibid Sch 1 para 7. As to the functions of the Office of Rail Regulation see PARAS 49 ante, 53 et seq post.

20 Ibid Sch 1 para 7(a).

21 Ibid Sch 1 para 7(b).

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51. Proceedings of the Office of Rail Regulation.

The Office of Rail Regulation¹ must determine arrangements for the conduct of its proceedings² and must publish those arrangements³. Such arrangements must include arrangements under which a member, employee or committee member⁴ who has a financial or other personal interest which is likely to influence his performance of a particular function is obliged⁵: (1) to declare the interest⁶; and (2) to withdraw from the performance of the function to the relevant extent⁷. Those same arrangements⁸ must also include arrangements under which a member, employee or committee member who has a financial or other personal interest which is relevant to a particular function but which is not likely to influence his performance of the particular function⁹ is obliged¹⁰: (a) to declare the interest¹¹; and (b) to withdraw from the performance of the function to the relevant extent, unless the members of the Office direct otherwise¹².

The Office of Rail Regulation may do anything which it thinks necessary or expedient for the purpose of or in connection with the performance of its functions¹³, except that the Office may not borrow money¹⁴.

The validity of any of its proceedings is not affected by either a vacancy¹⁵ or a defective appointment¹⁶.

1 As to the establishment and constitution of the Office of Rail Regulation see PARA 50 ante.

2 Railways and Transport Safety Act 2003 s 15(2), Sch 1 para 8(a). The arrangements referred to in the text may, in particular, include arrangements for a quorum: see Sch 1 para 8(a).

3 Ibid Sch 1 para 8(b).

4 As to the appointment of members, employees or committee members of the Office of Rail Regulation see PARA 50 ante.

5 Railways and Transport Safety Act 2003 Sch 1 para 18(1).

6 Ibid Sch 1 para 18(1)(a).

7 Ibid Sch 1 para 18(1)(b).

8 I.e. procedural arrangements made by the Office of Rail Regulation under ibid Sch 1 para 8: see Sch 1 para 18(2).

9 I.e. where the financial or other personal interest does not fall under ibid Sch 1 para 18(1) (see the text and notes 4-7 supra): see Sch 1 para 18(2).

10 Ibid Sch 1 para 18(2).

11 Ibid Sch 1 para 18(2)(a).

12 Ibid Sch 1 para 18(2)(b).

13 Ibid Sch 1 para 9(1). As to the functions of the Office of Rail Regulation generally see PARA 49 ante.

14 Ibid Sch 1 paras 9(2), 16.

15 Ibid Sch 1 para 10(a).

16 Ibid Sch 1 para 10(b).

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52. Financial provisions relating to the Office of Rail Regulation.

The Office of Rail Regulation¹ may, with the approval of the Secretary of State², make to or in respect of members of the Office, employees or committee members³ payments by way of or in respect of⁴: (1) remuneration⁵; (2) pension⁶; (3) allowances⁷; (4) expenses⁸.

Where an employee of the Office of Rail Regulation becomes a member of the Office⁹, the Secretary of State may determine that the person's term as a member is to be treated for the purposes of a civil service superannuation scheme¹⁰ as employment in the civil service of the State¹¹.

If the Secretary of State thinks that special circumstances of a person's ceasing to be a member of the Office of Rail Regulation make it appropriate to pay him compensation, the Office may pay him compensation of an amount approved by the Secretary of State (whether or not he receives other benefits by way of pension)¹².

The Office of Rail Regulation may incur expenditure in connection with advisory or other services provided to the Office¹³; and expenditure incurred by the Office in connection with the performance of its functions¹⁴ must¹⁵ be paid out of money provided by Parliament¹⁶.

The Office of Rail Regulation may not borrow money¹⁷.

1 As to the establishment and constitution of the Office of Rail Regulation see PARA 50 ante.

2 As to the Secretary of State see PARA 35 ante.

3 As to the appointment of members, employees or committee members of the Office of Rail Regulation see PARA 50 ante.

4 Railways and Transport Safety Act 2003 s 15(2), Sch 1 para 11.

5 Ibid Sch 1 para 11(a).

6 Ibid Sch 1 para 11(b).

7 Ibid Sch 1 para 11(c).

8 Ibid Sch 1 para 11(d).

9 Ibid Sch 1 para 12(1).

10 Ie under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

11 Railways and Transport Safety Act 2003 Sch 1 para 12(2). Service as an employee of the Office of Rail Regulation is employment in the civil service of the State: see Sch 1 para 5; and PARA 50 ante.

12 Ibid Sch 1 para 13.

13 Ibid Sch 1 para 14.

14 As to the functions of the Office of Rail Regulation generally see PARA 49 ante. The Office may do anything which it thinks necessary or expedient for the purpose of or in connection with the performance of its functions, subject to ibid Sch 1 para 16 (as to which see the text and note 17 infra): see Sch 1 para 9; and PARA 51 ante.

15 le to the extent that such expenditure is not met by other income of the Office of Rail Regulation: see *ibid* Sch 1 para 15.

16 *Ibid* Sch 1 para 15.

17 *Ibid* Sch 1 para 16.

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(C) DUTIES AND FUNCTIONS

53. General functions of the Office of Rail Regulation.

It is the duty of the Office of Rail Regulation¹, so far as it appears to it practicable from time to time to do so²:

- 166 (1) to keep under review the provision, both in Great Britain³ and elsewhere, of railway services⁴; and
- 167 (2) to collect information⁵ with respect to the provision of those services, with a view to facilitating the exercise of its functions⁶ under the Railways Act 1993⁷.

The Secretary of State⁸ may give general directions⁹ indicating:

- 168 (a) considerations to which the Office of Rail Regulation should have particular regard in determining the order of priority in which matters are to be brought under review in performing its duty under head (1) or head (2) above¹⁰; and
- 169 (b) considerations to which, in cases where it appears to the Office of Rail Regulation that any of its functions under the Railways Act 1993¹¹ are exercisable, it should have particular regard in determining whether to exercise those functions¹².

It is the duty of the Office of Rail Regulation, either where it considers it expedient or where it is requested by the Secretary of State or by the Office of Fair Trading¹³ to do so, to give information, advice and assistance to the Secretary of State or to the Office of Fair Trading with respect to any matter in respect of which any function of the Office of Rail Regulation under the Railways Act 1993¹⁴ is exercisable¹⁵.

1 The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), which are set out in s 4 (as amended): see PARA 33 ante. Despite the wording in the text, s 69 (as amended) is to be regarded as a function of the Office of Rail Regulation for these purposes. As to the Office of Rail Regulation generally see PARA 49 et seq ante.

2 Ibid s 69(1) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), (b)).

3 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

4 Railways Act 1993 s 69(1)(a). For the meaning of 'railway services' see PARA 82 post.

5 As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended); and PARA 419 post.

6 As to the meaning of 'functions' see PARA 7 note 12 ante.

7 Railways Act 1993 s 69(1)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(c)). The text refers to the Office of Rail Regulation's functions under the Railways Act 1993 Pt I (as amended) (see PARA 33 et seq ante): see s 69(1)(b) (as so amended).

8 As to the Secretary of State see PARA 35 ante.

9 As to directions given under the Railways Act 1993 see s 144 (as amended); and PARA 29 note 13 ante. Every annual report of the Office of Rail Regulation must include a statement setting out any general directions given during that year to the Office under s 69(2) (as amended): see s 74(2)(c) (as amended); and PARA 57 post.

10 Ibid s 69(2)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c)).

11 Ie under the Railways Act 1993 Pt I (as amended) (see PARA 33 et seq ante): see s 69(2)(b) (as amended: see note 12 infra).

12 Ibid s 69(2)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)-(c)).

13 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

14 Ie under the Railways Act 1993 Pt I (as amended) (see PARA 33 et seq ante): see s 69(3) (as amended: see note 15 infra).

15 Ibid s 69(3) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (10); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

UPDATE

53 General functions of the Office of Rail Regulation

TEXT AND NOTES--The Office of Rail Regulation has a duty to keep under review its regulatory functions, other than any function exercised under competition law (or, if exercisable in Wales, if or to the extent that it relates to a Welsh ministerial matter), and, when carrying out those functions, not to impose unnecessary burdens, and where proportionate and practicable, to remove unnecessary burdens: see the Regulatory Enforcement and Sanctions Act 2008 ss 72(1), (2), 73(1), (2)(c), (3)(c). The Office of Rail Regulation must publish a statement each year, setting out its proposals pursuant to the duty and, where a burden that is unnecessary has not been removed, explaining why its removal would be disproportionate or impracticable: see s 72(3)-(7).

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54. Investigatory functions of the Office of Rail Regulation.

It is the duty of the Office of Rail Regulation¹ to investigate any alleged or apprehended contravention of a condition² of a licence³, if the alleged or apprehended contravention is the subject of a representation (other than one appearing to it to be frivolous or vexatious) made to it by or on behalf of a person who appears to the Office of Rail Regulation to have an interest in the matter⁴.

However, the Office of Rail Regulation may, if it thinks fit, require the Rail Passengers' Council⁵ to investigate and report to it on any such alleged or apprehended contravention of a licence condition⁶ which relates to⁷: (1) the provision of services for the carriage of passengers by railway⁸; or (2) the provision of station services⁹, and which it would otherwise have been its duty to investigate¹⁰.

1 The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), which are set out in s 4 (as amended): see PARA 33 ante. Despite the wording in the text, s 68 (as amended) is to be regarded as a function of the Office of Rail Regulation for these purposes. As to the general functions of the Office of Rail Regulation see PARA 53 ante.

2 As to the meaning of 'contravention' in relation to any condition see PARA 29 note 13 ante.

3 For the meaning of 'licence' see PARA 83 note 6 post. As to licences and their conditions see PARA 83 et seq post.

4 Railways Act 1993 s 68(1) (amended by the Transport Act 2000 ss 216, 234(7), 274, Sch 17 Pt I paras 1, 13, Sch 31 Pt IV; the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 s 59(6), Sch 13 Pt 1). The Railways Act 1993 s 68(1) (as amended) is subject to s 68(2) (as amended): see s 68(1) (as so amended).

As to the application of s 68 (as amended), with modifications, for the purposes of Statements of National Regulatory Provisions (SNRPs) under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (as to which see PARAS 31 ante, 98 et seq post), see reg 14, Sch 3 Pt 1 para 1(d).

5 As to the Rail Passengers' Council see PARA 68 post; and as to the investigative duties of the Rail Passengers' Council see the Railways Act 1993 s 76 (as amended); and PARA 72 post.

6 Ie any matter falling within *ibid* s 68(1) (as amended) (see the text and notes 1-4 *supra*): see s 68(2) (as amended: see note 7 *infra*).

7 *Ibid* s 68(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 s 21(2)).

The general restrictions on the disclosure of information obtained under or by virtue of the provisions of the Railways Act 1993 are not to be seen as limiting the matters which may be included in, or made public as part of, a report of the Rail Passengers Council under any provision of Pt I (as amended): see s 145(5) (as amended); and PARA 419 post.

8 *Ibid* s 68(2)(a). For the meaning of 'providing services for the carriage of passengers by railway' see PARA 82 note 2 post.

9 *Ibid* s 68(2)(b). For the meaning of 'station services' see PARA 82 note 5 post.

10 *Ibid* s 68(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(c)).

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55. Publication of information and advice by the Office of Rail Regulation.

The Office of Rail Regulation¹ may arrange for the publication, in such form and in such manner as it considers appropriate, of such information² and advice as it may appear to it expedient to give to users or potential users of railway services³ in Great Britain⁴. In arranging for the publication of any such information or advice, the Office of Rail Regulation must have regard to the need for excluding, so far as that is practicable⁵:

- 170 (1) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Office of Rail Regulation, seriously and prejudicially affect the interests of that individual⁶; and
- 171 (2) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Office of Rail Regulation, seriously and prejudicially affect the interests of that body⁷.

The Office of Fair Trading⁸ must consult the Office of Rail Regulation before publishing⁹ any information or advice which may be published by the Office of Rail Regulation under the provisions above¹⁰.

1 The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), which are set out in s 4 (as amended): see PARA 33 ante. As to the Office of Rail Regulation generally see PARA 49 et seq ante.

2 As to the meaning of 'information' see PARA 34 note 5 ante. The general restrictions on the disclosure of information obtained under or by virtue of the provisions of the Railways Act 1993 are not to be seen as limiting the matters which may be published under s 71 (as amended): see s 145(5) (as amended); and PARA 419 post.

3 For the meaning of 'railway services' see PARA 82 post.

4 Railways Act 1993 s 71(1) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), (b)). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

5 Railways Act 1993 s 71(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

6 Railways Act 1993 s 71(2)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

7 Railways Act 1993 s 71(2)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

8 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

9 Ie under the Enterprise Act 2002 s 6 (provision of information etc to the public: see COMPETITION vol 18 (2009) PARA 171 et seq): see the Railways Act 1993 s 71(3) (as amended: see note 10 infra).

10 Ibid ss 71(3), 83(1) (s 71(3) amended by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (11)(a), (b); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); definition of 'OFT' in the Railways Act 1993 s 83(1) added by the Enterprise Act 2002 Sch 25 para 30(1), (13)(b)).

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56. Keeping of register by the Office of Rail Regulation.

The Office of Rail Regulation¹ must, at such premises and in such form as it may determine, maintain a register². The Office of Rail Regulation must³ cause to be entered in the register⁴:

- 172 (1) in relation to licences⁵ and European licences⁶, the provisions of⁷:
- 1
 1. (a) every licence, every licence exemption⁸ and every European licence⁹;
 2. (b) every assignment of a licence of which notice¹⁰ is received by the Office of Rail Regulation¹¹;
 3. (c) every modification¹² or revocation of a licence¹³, every requirement to modify conditions of a licence imposed on the Office of Rail Regulation¹⁴, and every modification or revocation of a European licence¹⁵;
 4. (d) every revocation of a licence exemption and every requirement to revoke a licence exemption imposed on the Office of Rail Regulation¹⁶;
 5. (e) every requirement imposed, or consent or approval¹⁷ given, by the Office of Rail Regulation under a licence or European licence¹⁸;
 6. (f) every requirement imposed, or consent or approval given, under a licence by any person (other than the Office of Rail Regulation) who is a qualified person¹⁹ for the purpose in question, being a requirement, consent or approval whose provisions have been notified to the Office of Rail Regulation pursuant to a condition of the licence²⁰; and
 7. (g) every final or provisional order²¹ made by the Office of Rail Regulation in relation to a licence, every revocation of such an order and every notice given by the Office of Rail Regulation²² that it is satisfied that it does not need to make such an order²³;
 8. (h) every scheme made by the Secretary of State in relation to consumer protection conditions²⁴;
 9. (i) every penalty imposed by the Office of Rail Regulation pursuant to its powers of enforcement²⁵;
 10. (j) every statement of policy published by the Office of Rail Regulation with respect to the imposition of penalties referred to in head (i) above²⁶;
 11. and notice of every surrender of a licence or European licence²⁷;
 - 2

173 (2) in relation to access agreements²⁸, access contracts²⁹ and installation access contracts³⁰, the provisions of:
 - 3
 12. (a) every facility exemption granted³¹;
 13. (b) every direction³² to enter into an access contract or an installation access contract³³;
 14. (c) every access agreement³⁴;
 15. (d) every amendment (however described) of an access agreement³⁵;
 16. (e) every general approval given³⁶ which is for the time being in force³⁷;
 17. (f) every direction requiring amendments to an access agreement permitting more extensive use³⁸;
 18. (g) every notice given by or to the Office of Rail Regulation or the Competition Commission pursuant to a review of access charges or licence conditions³⁹; and

19. (h) every document⁴⁰ issued or made by the Office of Rail Regulation under an access agreement⁴¹;
- 4
- 174 (3) in relation to experimental passenger services⁴² the provisions of⁴³:
- 5
20. (a) every designation⁴⁴ of a service as experimental⁴⁵;
21. (b) every notice⁴⁶ of a proposal to discontinue a service designated as experimental⁴⁷;
- 6
- 175 (4) in relation to closures, the provisions of⁴⁸:
- 7
22. (a) every closure ratification notice or closure non-ratification notice⁴⁹ issued by it⁵⁰;
23. (b) every closure requirement imposed by it⁵¹; and
- 8
- 176 (5) the provisions of every railway administration order⁵² and of every discharge of such an order⁵³.

The contents of the register are available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Secretary of State⁵⁴. Any person may, on the payment of such fee as may be specified in an order so made⁵⁵, require the Office of Rail Regulation to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Office of Rail Regulation to be a true copy or extract⁵⁶.

However, the contents of the register are available for inspection at any time by the Secretary of State⁵⁷, without payment of any fee; and the Secretary of State⁵⁸ may require the Office of Rail Regulation, without payment of any fee, to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Office of Rail Regulation to be a true copy or extract⁵⁹.

1 The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), which are set out in s 4 (as amended): see PARA 33 ante. As to the Office of Rail Regulation generally see PARA 49 et seq ante.

2 Railways Act 1993 s 72(1) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 s 59(6), Sch 13 Pt 1).

3 In subject to the Railways Act 1993 s 72(3) (as amended) and to any direction given under s 72(4) (as amended): see s 72(2) (as amended: see note 4 infra). Accordingly, in entering any provision in the register, the Office of Rail Regulation must have regard to the need for excluding, so far as that is practicable, the matters specified in s 71(2)(a), (b) (as amended) (as to which see PARA 55 ante): s 72(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Furthermore, if it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Office of Rail Regulation not to enter that provision in the register: Railways Act 1993 s 72(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the Secretary of State see PARA 35 ante.

4 Railways Act 1993 s 72(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

5 For the meaning of 'licence' see PARA 83 note 6 post. As to licences generally see PARA 83 et seq post.

6 For the meaning of 'European licence' see PARA 92 note 2 post. As to European licences generally see PARA 93 et seq post.

7 Railways Act 1993 s 72(2)(a) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 3, Sch 1 Pt 1 para 3(1), (6)(a)). As to the application of the Railways Act 1993 s 72 (as amended), with modifications, for the purposes of Statements of National Regulatory Provisions (SNRPs) under

the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (as to which see PARAS 31 ante, 98 et seq post), see reg 14, Sch 3 Pt 1 para 1(e), Sch 3 Pt 2 para 7.

8 For the meaning of 'licence exemption' see PARA 92 note 9 post.

9 Railways Act 1993 s 72(2)(a)(i) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (6)(b)).

10 For the meaning of 'notice' see PARA 34 note 4 ante.

11 Railways Act 1993 s 72(2)(a)(ii) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

12 As to the meaning of 'modification' see PARA 33 note 46 ante.

13 As to the modification or revocation of licences see PARA 83 et seq post.

14 The text continues to refer to every requirement to modify conditions of a licence imposed on the Office of Rail Regulation by the Strategic Rail Authority, which is now abolished (see PARA 46 ante) but whose functions under the Railways Act 1993 s 16 (as amended) (modification by order under other enactments: see PARA 90 note 10 post) are now exercised by the 'relevant authority'. However, the Competition Commission may also give a direction requiring the Office of Rail Regulation to make (or not to make) modifications: see s 15A (as added and amended) (Competition Commission's power to veto modifications following report) (see PARA 91 et seq post).

15 Ibid s 72(2)(a)(iii) (amended by the Transport Act 2000 s 216, Sch 17 Pt I paras 1, 15(a); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (6)(c)). As to the modification or revocation of European licences see PARA 97 post.

16 Railways Act 1993 s 72(2)(a)(iv) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 15(b); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the revocation of licence exemptions see PARA 92 post. The text continues to refer to every requirement to revoke a licence exemption imposed on the Office of Rail Regulation by the Strategic Rail Authority, which is now abolished (see note 14 supra).

17 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

18 Ibid s 72(2)(a)(v) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (6)(d)).

19 Ie within the meaning of the Railways Act 1993 s 9(3) (as amended) (see PARA 84 post): see s 72(2)(a)(vi) (as amended: see note 20 infra).

20 Ibid s 72(2)(a)(vi) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the making of orders securing compliance with conditions or requirements where such conditions or requirements are being contravened, or are likely to be contravened, by a licence holder, see PARA 179 et seq post.

21 For the meanings of 'final order' and 'provisional order' for these purposes see PARA 179 note 4 post.

22 Ie under the Railways Act 1993 s 55(6) (as amended) (see PARA 180 post): see s 72(2)(a)(vii) (as amended: see note 23 infra).

23 Ibid s 72(2)(a)(vii) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 15(c); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

24 Railways Act 1993 s 72(2)(a)(viii) (added by the Transport Act 2000 Sch 17 Pt I paras 1, 15(d)). The text refers to schemes made under the Railways Act 1993 s 7A(4) (as added; now repealed) (ie schemes in relation to any licence or licence exemption granted before the coming into force of regulations under s 7A(2) (as added; now repealed)) or under the Transport Act 2000 s 253, Sch 28 para 2 (ie schemes in relation to any licence or licence exemption granted before the coming into force of amendments made by Sch 17 Pt I (as amended)): see the Railways Act 1993 s 72(2)(a)(viii) (as so added).

25 Ibid s 72(2)(a)(ix) (s 72(2)(a)(ix), (x) added by the Transport Act 2000 s 252, Sch 27 paras 17, 36(1), (2); and amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). The text refers to every penalty imposed under the Railways Act 1993 s 57A (as added and amended) (see PARA 183 post): see s 72(2)(a)(ix) (as so added).

26 Ibid s 72(2)(a)(x) (as added and amended: see note 25 supra). The text refers to the policy published by the Secretary of State under s 57A (as added and amended) (see s 57B (as added and amended); and PARA 183 post): see s 72(2)(a)(x) (as so added).

27 Ibid s 72(2)(a) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (6)(e)).

28 Where an access agreement is entered into or amended, the facility owner or installation owner concerned must send a copy of the access agreement or amendment to the Office of Rail Regulation not later than 14 days after the date on which the access agreement is entered into or the amendment is made, as the case may be: Railways Act 1993 s 72(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). A person who fails to comply with the Railways Act 1993 s 72(5) (as amended) is guilty of an offence see s 72(6); and PARA 370 post. For the meaning of 'access agreement' see PARA 105 note 2 post; for the meaning of 'facility owner' see PARA 102 note 1 post; and for the meaning of 'installation owner' see PARA 104 note 3 post. As to the standard scale see PARA 370 note 7 post.

29 For the meaning of 'access contract' see PARA 102 note 2 post.

30 For the meaning of 'installation access contracts' see PARA 104 note 4 post.

31 Ie under the Railways Act 1993 s 20(3) (as amended) (see PARA 108 post): see s 72(2)(b)(i). For the meaning of 'facility exemption' see PARA 108 note 9 post.

32 As to directions given under the Railways Act 1993 see s 144 (as amended); and PARA 29 note 13 ante.

33 Ibid s 72(2)(b)(ii). As to the directions which are given by the Office of Rail Regulation as mentioned in the text see PARA 103 et seq post.

34 Ibid s 72(2)(b)(iii).

35 Ibid s 72(2)(b)(iv).

36 Ie under ibid s 18(1)(c) (as added and amended) (see PARA 102 post), s 19(3)(c) (as added and amended) (see PARA 104 post) or s 22(3) (as amended) (see PARA 106 post): see s 72(2)(b)(v) (as amended: see note 37 infra).

37 Ibid s 72(2)(b)(v) (amended by the Transport Act 2000 s 230(5)).

38 Railways Act 1993 s 72(2)(b)(va) (s 72(2)(b)(va), (vb) added by the Transport Act 2000 Sch 27 paras 17, 36(1), (3)). The text refers to every direction under the Railways Act 1993 s 22A (as added and amended) (see PARA 105 post): see s 72(2)(b)(va) (as so added).

39 Ibid s 72(2)(b)(vb) (as added (see note 38 supra); and amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). The text refers to every notice given by or to the Office of Rail Regulation or the Competition Commission under the Railways Act 1993 s 19A, Sch 4A (as added and amended) (see PARA 171 et seq post): see s 72(2)(b)(vb) (as so added and amended).

40 As to the service of documents see ibid s 149; and PARA 34 note 13 ante.

41 Ibid s 72(2)(b)(vi) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

42 Ie within the meaning of the Railways Act 2005 Pt 4 (ss 22-45) (see PARA 145 et seq post): see the Railways Act 1993 s 72(2)(d) (as amended: see note 43 infra).

43 Ibid s 72(2)(d) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 10(a)). For the meaning of 'experimental passenger services' see PARA 161 note 2 post.

44 Ie under the Railways Act 2005 s 36 (see PARA 161 post): see the Railways Act 1993 s 72(2)(d)(i) (as substituted: see note 45 infra).

45 Ibid s 72(2)(d)(i) (s 72(2)(d)(i), (ii) substituted by the Railways Act 2005 Sch 11 paras 1, 10(b)).

46 Ie under the Railways Act 2005 s 37(1) or s 37(2) (see PARA 162 post): see the Railways Act 1993 s 72(2)(d)(ii) (as substituted: see note 45 supra).

47 Ibid s 72(2)(d)(ii) (as substituted: see note 45 supra).

48 Ibid s 72(2)(da) (added by the Railways Act 2005 Sch 11 paras 1, 10(c)).

49 le within the meaning of the Railways Act 2005 Pt 4 (see PARA 145 et seq post): see the Railways Act 1993 s 72(2)(da)(i) (as added: see note 50 infra).

50 Ibid s 72(2)(da)(i) (s 72(2)(da)(i), (ii) added by the Railways Act 2005 Sch 11 paras 1, 10(c)).

51 Railways Act 1993 s 72(2)(da)(ii) (as added: see note 50 supra).

52 For the meaning of 'railway administration order' see PARA 187 post. As to railway administration orders generally see PARA 187 et seq post.

53 Railways Act 1993 s 72(2)(e).

54 Ibid s 72(7). Any sums received by the Office of Rail Regulation under s 72 (as amended) must be paid into the Consolidated Fund: s 72(11) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

As to the making of orders under the Railways Act 1993 generally see PARA 35 note 12 ante. The Secretary of State, in exercise of the powers conferred on him by s 72(7) and s 72(8) (as amended) (see the text and notes 55-56 infra), has made the Railways (Registers) Order 1994, SI 1994/575. Accordingly, the contents of the Office of Rail Regulation's register are available for inspection by the public, without payment of any fee, between 10 am and 4 pm on each working day except when the premises at which the Office of Rail Regulation's register is maintained are closed by reason of an emergency: Interpretation Act 1978 s 17(2)(b); Railways (Registers) Order 1994, SI 1994/575, art 2. For these purposes, 'working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, a bank holiday or an official holiday: art 1(2). 'Bank holiday' means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321) in the locality in which are situated the premises at which the Office of Rail Regulation's register is for the time being maintained: Interpretation Act 1978 s 17(2)(b); Railways (Registers) Order 1994, SI 1994/575, art 1(2). 'Emergency' includes power failure: art 1(2).

55 As to the order so made see note 54 supra; and note 56 infra.

56 Railways Act 1993 s 72(8) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

The fee for the supply of a copy of, or an extract from, any part of the Office of Rail Regulation's register certified by the Office of Rail Regulation to be a true copy or extract is £2 together with 10 pence for each page supplied: Railways (Registers) Order 1994, SI 1994/575, art 3. As to sums so received by the Office of Rail Regulation see note 54 supra.

57 The text continues to refer to inspection by the Strategic Rail Authority, which is now abolished and whose duty to keep a register was assumed by the Secretary of State: see PARA 46 ante. Reciprocal duties in relation to the Office of Rail Regulation apply in relation to the register so kept by the Secretary of State: see PARA 37 ante.

58 See note 57 supra.

59 Railways Act 1993 s 72(9) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

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57. Annual and other reports of the Office of Rail Regulation.

The Office of Rail Regulation¹ must, as soon as practicable after the end of each financial year², make to the Secretary of State³ a report on⁴:

- 177 (1) its activities during that year⁵; and
- 178 (2) the activities of the Competition Commission⁶ during that year, so far as relating to references made by the Office of Rail Regulation⁷.

Every such report must include:

- 179 (a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Office of Rail Regulation's functions⁸; and
- 180 (b) a statement setting out any general directions given to the Office of Rail Regulation during that year⁹.

The Secretary of State must lay a copy of every report so made by the Office of Rail Regulation¹⁰ before each House of Parliament and must arrange for copies of every such report to be published in such manner as he may consider appropriate¹¹. The Office of Rail Regulation may also prepare such other reports as it thinks fit with respect to any matter falling within the scope of its functions¹². The Office of Rail Regulation may arrange for copies of any report so prepared¹³ to be published in such manner as it may consider appropriate¹⁴.

1 The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), which are set out in s 4 (as amended): see PARA 33 ante. As to the Office of Rail Regulation generally see PARA 49 et seq ante.

2 For these purposes, 'financial year' means a period of 12 months ending with 31 March: *ibid* s 74(8) (definition amended by the Railways and Transport Safety Act 2003 s 118, Sch 8).

3 As to the Secretary of State see PARA 35 ante.

4 Railways Act 1993 s 74(1) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), 14(a)).

In making or preparing any report under the Railways Act 1993 s 74 (as amended), the Office of Rail Regulation must have regard to the need for excluding, so far as that is practicable, the matters specified in s 71(2)(a), (b) (as amended) (as to which see PARA 55 ante): s 74(6) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). However, the general restrictions on the disclosure of information obtained under or by virtue of the provisions of the Railways Act 1993 are not to be seen as limiting the matters which may be included in, or made public as part of, a report of the Office of Rail Regulation under any provision of Pt I (as amended): see s 145(5) (as amended); and PARA 419 post.

5 Railways Act 1993 s 74(1)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(c)).

6 As to the Competition Commission see COMPETITION vol 18 (2009) PARA 9 et seq.

7 Railways Act 1993 s 74(1)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental

Provisions Order 1999, SI 1999/506, art 33(b)). As to the making of modification references to the Competition Commission by the Office of Rail Regulation see PARA 88 post. The Competition Act 1998 s 45(7) (as amended), Sch 7 para 12A (as added) (annual reports of the Competition Commission made to the Secretary of State: see COMPETITION vol 18 (2009) PARA 9) does not apply to activities of the Competition Commission on which the Office of Rail Regulation is required to report by the Railways Act 1993 s 74 (as amended): s 74(7) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (12); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)).

8 Railways Act 1993 s 74(2)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the meaning of 'functions' see PARA 7 note 12 ante.

9 Railways Act 1993 s 74(2)(c) (amended by the Transport Act 2000 s 274, Sch 31 Pt IV; and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). The directions referred to are those under the Railways Act 1993 s 69(2) (as amended) (see PARA 53 ante): see s 74(2)(c) (as so amended).

10 *Ie* under *ibid* s 74(1) (as amended) (see the text and notes 1-7 *supra*): see s 74(3) (as amended: see note 11 *infra*).

11 *Ibid* s 74(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

12 Railways Act 1993 s 74(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)-(c)).

13 *Ie* under the Railways Act 1993 s 74(4) (as amended) (see the text and note 12 *supra*): see s 74(5) (as amended: see note 14 *infra*).

14 *Ibid* s 74(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

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58. Duty of the Office of Rail Regulation to assist and advise national authorities.

It is the duty of the Office of Rail Regulation¹ to comply with every reasonable requirement of the Secretary of State²:

- 181 (1) to provide him with information or advice about a matter connected with a function³ or other activity of his in relation to railways⁴ or railway services⁵;
- 182 (2) to provide him with information or advice about a matter relevant to the railway safety purposes⁶; or
- 183 (3) otherwise to provide him with assistance in relation to a matter that is connected with such a function or activity or is relevant to those purposes⁷.

It is the duty of the Office of Rail Regulation to comply with every reasonable requirement of the Welsh Ministers⁸ to provide them with information or advice about a matter connected with a function or other activity of the Welsh Ministers in relation to railways or railway services⁹.

1 The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 2005, which are set out in the Railways Act 1993 s 4 (as amended): see PARA 33 ante. As to the Office of Rail Regulation generally see PARA 49 et seq ante.

2 Railways Act 2005 s 51(1). As to the Secretary of State see PARA 35 ante.

3 As to the meaning of 'function' see PARA 7 note 12 ante; definition applied by ibid s 58(2).

4 For the meaning of 'railway' see PARA 82 note 2 post; definition applied by ibid s 58(2).

5 Ibid s 51(1)(a). References in s 51 to the functions of a person in relation to railways or railway services include references, in particular, to all that person's functions under the Railways Act 1993 Pt I (ss 4-83) (as amended) (see PARA 33 et seq ante), the Transport Act 2000 Pt 4 (ss 212-254) (as amended) (see PARA 44 et seq ante) or the Railways Act 2005: s 51(4). For the meaning of 'railway services' see PARA 82 post; definition applied by s 58(2). Passenger Transport Executives also have a duty to advise the Secretary of State: see PARA 65 post.

6 Ibid s 51(1)(b). For these purposes, 'railway safety purposes' has the same meaning as in s 2, Sch 3 (see PARA 196 post): s 51(5).

7 Ibid s 51(1)(c).

8 Ie formerly the National Assembly for Wales. As to the Welsh Ministers see PARA 35 ante. As to provision made in relation to the Scottish Ministers see ibid s 51(2); and as to the Scottish Ministers generally see PARA 124 note 7 post.

9 Ibid s 51(3).

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59. Appellate authority of the Office of Rail Regulation.

The Office of Rail Regulation¹ has statutory jurisdiction to determine appeals brought: (1) by an aggrieved applicant under the infrastructure access and management provisions²; or (2) by persons performing safety critical tasks³ who are denied the entitlements associated with proper access to training services⁴.

The Office of Rail Regulation also has jurisdiction under the non-statutory Network Code⁵ to hear appeals from decisions made by the relevant tribunal in relation to certain matters related to access rights and conditions⁶. The Office of Rail Regulation, in determining any such matter in question, has the power to give directions as to the procedure to be followed in the appeal, to appoint any person it considers has suitable knowledge and experience to assist the Office of Rail Regulation by acting as amicus curiae, to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the Office of Rail Regulation and to make such orders as it thinks fit in relation to costs⁷.

1 As to the Office of Rail Regulation generally see PARA 49 et seq ante.

2 See under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 29; and PARA 61 post. However, where the matter of an appeal to the regulatory body is one in relation to which directions may be sought from the Office of Rail Regulation under the Railways Act 1993, the applicant must lodge the appeal by way of an application under the relevant provision of that Act: see reg 29(3); and PARA 61 post.

3 For the meaning of 'safety critical task' see PARA 253 post.

4 See the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 5; and PARA 259 post.

5 As to the Network Code (17 October 2007) (formerly the Railtrack Track Access Conditions) see PARA 102 post.

6 Provision is made for any industry party (the appellant) to challenge a determination made under the Network Code (17 October 2007) by appeal in the first instance to the relevant Access Dispute Resolution Rules (ADRR) panel and from decisions of that tribunal to the Office of Rail Regulation (the respondent being any other access party which is subject to such determination) as follows:

- 44 (1) if any train operator or access option holder is dissatisfied with any decision made by Network Rail when managing the translation of access rights into the construction of the timetable under Part D (see Condition D5 - Timetable Appeal Procedure);
- 45 (2) if any access party is dissatisfied as to any matter concerning the operation of the procedure governing changes to the vehicles used on the network ('vehicle change'), estimates of the costs of assessing a proposal for vehicle change or the notice of response given in respect of a proposed vehicle change (see Condition F5 - Appeal Procedure);
- 46 (3) if any access party is dissatisfied as to any matter concerning the operation of the procedure governing certain types of change to the network ('network change'), estimates of the costs of assessing a proposal for network change or notices given in respect of a proposed network change (see Condition G10 - Appeal Procedure);
- 47 (4) if any train operator is dissatisfied as to any matter concerning or in connection with the establishment of a section of the Railway Operational Code ('ROC Section') or any variation of a ROC Section or any decision by Network Rail not to implement such a variation proposed by a train operator (see Condition HA7 - Appeals);

- 48 (5) if either Network Rail or the train operators are dissatisfied with specified matters regarding changes to access rights (see Condition J13 - Dispute Resolution);
- 49 (6) if any train operator is dissatisfied as to any matter concerning or in connection with the establishment of a local output commitment made in respect of it for the management of operational disruption or any variation of such a local output commitment (see Condition L7 - Appeals).

As to the procedure to be used for appeals from decisions of the relevant ADRR panel to the Office of Rail Regulation see Part M (Appeals). If the Office of Rail Regulation refuses to hear the appeal, and the appellant wishes to pursue the appeal, he must do so before the High Court: see Part M Explanatory Note para B.

- 7 See the Network Code Condition M7 (powers of Office of Rail Regulation).

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(D) RESPONSIBILITIES UNDER EUROPEAN LEGISLATION

60. Extended regulatory responsibility of the Office of Rail Regulation.

The provisions of the Railways Act 1993 which set out the general duties of the Office of Rail Regulation¹ have effect² for the purposes of the provisions which govern access to and the management of the railway infrastructure³, subject to minor modifications⁴.

The Office of Rail Regulation (or, in the case of a rail link facility⁵, the Secretary of State⁶) must ensure that charges for the use of railway infrastructure imposed by the infrastructure manager⁷ comply with the statutory requirements⁸. Negotiations between an applicant⁹ and the infrastructure manager about the level of infrastructure charges are only to be permitted if they are carried out under the supervision of the Office of Rail Regulation and, if such negotiations are likely to contravene the statutory requirements¹⁰, it is the duty of the Office of Rail Regulation to intervene¹¹.

The Office of Rail Regulation must exchange information about its work¹², decision making principles¹³ and practice¹⁴ with other national regulatory bodies for the purpose of co-ordinating decision making principles across the Community¹⁵.

1 Ie the Railways Act 1993 s 4 (as amended) (as to which see PARA 33 ante). For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 post.

2 Ie to the extent relevant and consistent with Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) (as amended) and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) (as amended) (as to which see PARA 30 et seq ante).

3 Ie the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049. For the meaning of 'railway infrastructure' see PARA 109 note 3 post.

4 For these purposes, the Railways Act 1993 s 4 (as amended) (as to which see PARA 33 ante) has effect (to the extent described in note 2 supra), as if the reference to the functions assigned or transferred to the Office of Rail Regulation under or by virtue of the Railways Act 1993 Pt I (ss 4-83) (as amended) (see PARA 35 et seq ante) included the functions assigned to it under or by virtue of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 28(1). All property, rights and liabilities to which the International Rail Regulator was entitled or subject at 28 November 2005, including rights and liabilities relating to staff, were transferred to the Office of Rail Regulation: see reg 32(2). As to the abolition of the office of the International Rail Regulator as at 28 November 2005 see regs 1(1), 32(1).

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 6 (regs 28-32) see PARA 109 note 3 post.

5 For the meaning of 'rail link facility' see PARA 114 note 12 post.

6 As to the Secretary of State see PARA 35 ante.

7 For the meaning of 'infrastructure manager' see PARA 109 note 7 post.

8 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 28(2). The text refers to compliance with the requirements of Pt 4 (regs 12-15) and reg 12, Sch 3 (see PARA 115 post).

9 For the meaning of 'applicant' see PARA 110 note 1 post.

10 le the requirements of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 28(3).

11 Ibid reg 28(3). Where negotiations described in reg 28(3) relate to the level of infrastructure charges in respect of a rail link facility, references in reg 28(3) to the Office of Rail Regulation must be taken to be references to the Secretary of State: reg 28(4).

12 Ibid reg 28(5)(a). As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 post.

13 Ibid reg 28(5)(b).

14 Ibid reg 28(5)(c).

15 Ibid reg 28(5).

UPDATE

60 Extended regulatory responsibility of the Office of Rail Regulation

TEXT AND NOTES--As to the Office of Rail Regulation's responsibility of deciding whether a service for the transport of passengers by train is an international passenger service, see SI 2005/3049 s 29A (added by SI 2009/1122).

TEXT AND NOTES 5-8--SI 2005/3049 reg 28(2) amended: SI 2009/1122.

TEXT AND NOTES 9-11--SI 2005/3049 reg 28(3) amended: SI 2009/1122.

NOTE 11--SI 2005/3049 reg 28(4) omitted: SI 2009/1122.

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61. Extended appellate jurisdiction of the Office of Rail Regulation.

An applicant¹ has a right of appeal to the Office of Rail Regulation² if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager³, an allocation body⁴, a charging body⁵, a service provider⁶ or, as the case may be, a railway undertaking⁷, concerning any of the following matters⁸:

- 184 (1) the network statement⁹;
- 185 (2) the information which¹⁰ must be included in that network statement¹¹;
- 186 (3) the allocation process and its result¹²;
- 187 (4) the charging scheme and charging system¹³;
- 188 (5) the level or structure of infrastructure fees¹⁴ which it is, or may be, required to pay¹⁵; and
- 189 (6) the arrangements in connection with the entitlements to access that are granted¹⁶.

Where the matter of an appeal is one in relation to which directions may be sought from the Office of Rail Regulation under the Railways Act 1993¹⁷, the applicant must lodge the appeal by way of an application under the relevant provision of that Act, and¹⁸ the appropriate provisions of that Act apply to the consideration of that application¹⁹. However, where the matter of such an appeal is not one in relation to which such directions may be sought, because:

- 190 (a) the railway facility to which the appeal relates is²⁰ an exempt facility²¹;
- 191 (b) the appeal relates to a rail link facility²²; or
- 192 (c) the subject matter of the appeal is not within the scope of directions which may be sought under the applicable provisions of the Railways Act 1993²³,

the applicant must lodge the appeal by way of an application as set out below²⁴ and in such form and manner as the Office of Rail Regulation may from time to time prescribe²⁵. In respect of circumstances when an appeal to the regulatory body contests either that: (i) viable alternatives by rail under market conditions do not exist so as to justify a request for access to terminals or ports being subject to restrictions²⁶; or (ii) that viable alternative means of the service being provided under market conditions do not exist so as to justify the refusal of a request for the supply of services to which applicants may be entitled²⁷, the Office of Rail Regulation, when considering such an appeal, is under a duty to determine whether, in respect of the access to which the appeal relates, viable alternatives under market conditions do exist²⁸.

The Office of Rail Regulation must, within two months of the date of receipt of all relevant information²⁹, make a decision on the appeal³⁰ and, where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, to remedy the situation arising out of³¹ the appeal³². In making a decision on an appeal³³ against refusal by an infrastructure manager or allocation body to allocate infrastructure capacity³⁴, or against the terms of an offer of infrastructure capacity, the Office of Rail Regulation must either: (A) confirm that no modification of the infrastructure

manager or allocation body's decision is required³⁵; or (B) require modification of that decision in accordance with directions issued by that Office³⁶. Without prejudice to the right of any person to make an application to the court for judicial review³⁷, a decision by the Office of Rail Regulation on an appeal³⁸ is binding on all parties affected by that decision³⁹ and it is the duty of any person to whom a direction is given⁴⁰ to comply with and give effect to that direction⁴¹.

Where the subject matter of an appeal relates to the allocation of capacity crossing more than one network⁴², the Office of Rail Regulation may, where the decision of an infrastructure manager in another Member State is a material fact, refer that appeal to the European Commission for a decision⁴³.

1 For the meaning of 'applicant' see PARA 110 note 1 post.

2 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 post.

3 For the meaning of 'infrastructure manager' see PARA 109 note 7 post.

4 For the meaning of 'allocation body' see PARA 109 note 7 post.

5 For the meaning of 'charging body' see PARA 109 note 7 post.

6 For the meaning of 'service provider' see PARA 109 note 12 post.

7 For the meaning of 'railway undertaking' see PARA 109 note 1 post.

8 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 29(1).

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 6 (regs 28-32) see PARA 109 note 3 post.

9 Ibid reg 29(2)(a). The text refers to the network statement produced in accordance with reg 11 (as to which see PARA 113 post): see reg 29(2)(a). For the meaning of 'network statement' see PARA 113 note 2 post.

10 Ie by virtue of ibid reg 11(4) (as to which see PARA 113 post): see reg 29(2)(b).

11 Ibid reg 29(2)(b).

12 Ibid reg 29(2)(c). The text refers to the allocation process and its result as prescribed in Pt 5 (regs 16-27) and Sch 4 (as to which see PARA 118 post): see reg 29(2)(c). For the meaning of 'allocation' see PARA 111 note 2 post.

13 Ibid reg 29(2)(d). The text refers to the charging scheme and charging system established in accordance with reg 12 (as to which see PARA 114 post): see reg 29(2)(d). For the meaning of 'charging scheme' see PARA 113 note 2 post; and for the meaning of 'charging system' see PARA 115 note 9 post.

14 Ie the principles of which are prescribed in ibid Pt 4 (regs 12-15) and reg 12(2), Sch 3 (as to which see PARA 115 post): see reg 29(2)(e).

15 Ibid reg 29(2)(e).

16 Ibid reg 29(2)(f). The text refers to entitlements to access granted under Pt 2 (regs 5-7) and Sch 2 (as to which see PARA 109 post): see reg 29(2)(f).

17 Ie under the Railways Act 1993 s 17 (as amended) (directions requiring facility owner to enter into access contract for use of railway facility: see PARA 103 post) or s 22A (as added and amended) (directions requiring amendments to access agreement permitting more extensive use: see PARA 105 post).

18 Ie subject to any applicable provisions of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 29(3).

19 Ibid reg 29(3).

20 Ie by virtue of the Railways Act 1993 s 20 (as amended) (as to which see PARA 108 post): see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 29(4)(a).

21 Ibid reg 29(4)(a).

- 22 Ibid reg 29(4)(b). For the meaning of 'rail link facility' see PARA 114 note 12 post.
- 23 Ibid reg 29(4)(c). The provisions referred to in the text are those cited in note 17 supra.
- 24 Ie under ibid reg 29: see reg 29(4).
- 25 Ibid reg 29(4). Where the Office of Rail Regulation, by virtue of reg 29(4), prescribes the manner and form of any appeal to be lodged, that Office must make that prescription and details of such manner and form publicly available: reg 28(6).
- 26 Ibid reg 29(6)(a). The text refers to restrictions imposed under reg 6(2) (as to which see PARA 109 post): see reg 29(6)(a).
- 27 Ibid reg 29(6)(b). The text refers to refusal of a request for the supply of services under reg 7(4) (as to which see PARA 110 post): see reg 29(6)(b).
- 28 Ibid reg 29(5).
- 29 Ie including information provided pursuant to ibid reg 31: see reg 29(7). If the Office of Rail Regulation requests information in connection with its functions under reg 29, the Railways Act 1993 s 80 (as amended) (duty of certain persons to furnish information on request: see PARA 34 ante) applies with appropriate modifications: see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 31. As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 post; and as to the offence of making false statements, etc in giving any information under or for the purposes of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 418 post.
- 30 Ibid reg 29(7)(a).
- 31 Ibid reg 29(7)(b).
- 32 Ibid reg 29(7). The text refers to an appeal brought under reg 29: see reg 29(7). Where a decision or direction under reg 29(7) would affect a rail link facility or, as the case may be, the operation of the development agreement, the Office of Rail Regulation must consult and take into account any representations made by, the Secretary of State before making or issuing such a decision or direction: reg 29(8). Where reg 29(8) applies and, following consultation, the Secretary of State submits representations, the Office of Rail Regulation must, before making or issuing a decision or direction, consult such interested parties as it considers appropriate on the representations submitted by the Secretary of State: reg 29(9). For the meaning of 'development agreement' see PARA 114 note 14 post. As to the Secretary of State see PARA 35 ante.
- 33 Ie an appeal brought under ibid reg 29: see reg 29(10).
- 34 For the meaning of 'infrastructure capacity' see PARA 109 note 3 post.
- 35 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 29(10)(a).
- 36 Ibid reg 29(10)(b).
- 37 Ie under CPR Pt 54: see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 29(11). As to the procedure for judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 659 et seq.
- 38 Ie an appeal brought under ibid reg 29: see reg 29(11)(a).
- 39 Ibid reg 29(11)(a). The obligation to comply with reg 29(11) is a duty whose breach may found an action in civil proceedings: see reg 36(1)(e); and PARA 422 post.
- 40 Ie given under ibid reg 29: see reg 29(11)(b).
- 41 Ibid reg 29(11)(b). See note 39 supra.
- 42 Ie in particular, the procedures described in ibid reg 17 (as to which see PARA 119 post): reg 29(12). For the meaning of 'network' see PARA 109 note 7 post.
- 43 Ibid reg 29(12).

UPDATE

61 Extended appellate jurisdiction of the Office of Rail Regulation

NOTE 29--SI 2005/3049 reg 31 amended: SI 2009/1122.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(2) SUPERVISION OF THE RAILWAYS/ (iii) Statutory Bodies, etc/B. OFFICE OF RAIL REGULATION/(D) Responsibilities under European Legislation/62. Responsibilities of the Office of Rail Regulation in relation to competition.

62. Responsibilities of the Office of Rail Regulation in relation to competition.

Any applicant¹ or interested party may submit a complaint to the Office of Rail Regulation², in such form and manner as that Office may from time to time prescribe³, if it believes that it has been treated unjustly, been the subject of discrimination or has been injured in any other way⁴. The Office of Rail Regulation is responsible for both determining such complaints⁵ which relate to⁶, and monitoring generally⁷, competition in the rail services markets, including the rail freight transport market⁸.

Without prejudice to the rights of any person to make an application to the court for judicial review⁹, where, following receipt of a complaint¹⁰ or of information gathered on its own initiative¹¹, the Office of Rail Regulation identifies undesirable developments in relation to competition in the rail services markets, it must at the earliest possible opportunity determine measures and take appropriate action to correct those developments¹².

1 For the meaning of 'applicant' see PARA 110 note 1 post.

2 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 post.

3 Where the Office of Rail Regulation, by virtue of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 30(2), prescribes the manner and form of any complaint to be lodged, that Office must make that prescription and details of such manner and form publicly available: reg 28(6).

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 6 (regs 28-32) see PARA 109 note 3 post.

4 Ibid reg 30(2). As to the Office of Rail Regulation's role in relation to competition in the rail sector generally see PARA 186 et seq post.

5 Ie complaints lodged under ibid reg 30(2) (as to which see the text and notes 1-4 supra): see reg 30(1)(b).

6 Ibid reg 30(1)(b).

7 Ibid reg 30(1)(a).

8 Ibid reg 30(1).

9 See ibid reg 30(4). As to the procedure for judicial review see CPR Pt 54; and JUDICIAL REVIEW vol 61 (2010) PARA 659 et seq.

10 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 30(3)(a). The text refers to a complaint lodged under reg 30(2) (as to which see the text and notes 1-4 supra): see reg 30(3)(a).

11 Ibid reg 30(3)(b). If the Office of Rail Regulation requests information in connection with its functions under reg 30, the Railways Act 1993 s 80 (as amended) (duty of certain persons to furnish information on request) (see PARA 34 ante) applies with appropriate modifications: see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 31. As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 post; and as to the offence of making false statements, etc in giving any information under or for the purposes of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 418 post.

12 Ibid reg 30(3).

UPDATE

62 Responsibilities of the Office of Rail Regulation in relation to competition

NOTE 11--SI 2005/3049 reg 31 amended: SI 2009/1122.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(2) SUPERVISION OF THE RAILWAYS/ (iii) Statutory Bodies, etc/C. PASSENGER TRANSPORT EXECUTIVES, ETC/(A) In general/63. Passenger transport areas, authorities and executives in England.

C. PASSENGER TRANSPORT EXECUTIVES, ETC

(A) IN GENERAL

63. Passenger transport areas, authorities and executives in England.

Subject to any order relating to the alteration or abolition of passenger transport areas¹, each of the metropolitan counties in England² is a passenger transport area³; each metropolitan county has a Passenger Transport Authority⁴; and the Passenger Transport Executive for a passenger transport area is the body which immediately before 6 January 1986 was the Passenger Transport Executive for the designated⁵ area corresponding to that passenger transport area⁶.

1 See the Transport Act 1968 s 9(1) (as substituted and amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247. Orders relating to the alteration or abolition of passenger transport areas are made under the Local Government Act 1985 s 42(1)(c) (as amended) (reorganisation of functions: see LOCAL GOVERNMENT vol 69 (2009) PARA 53).

2 For the meaning of 'England' see PARA 29 note 3 ante. As to the metropolitan counties see LOCAL GOVERNMENT vol 69 (2009) PARA 24.

3 See the Transport Act 1968 s 9(1)(a)(i) (as substituted); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247.

4 See the Local Government Act 1985 s 28; and LOCAL GOVERNMENT vol 69 (2009) PARA 49.

5 Is designated by the Secretary of State for the purposes of the Transport Act 1968 Pt II (ss 9-23A) (as amended) by an order under s 9(1) (as originally enacted); see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247.

6 See *ibid* s 9(1)(c) (as substituted and amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247. As to the railway functions of Passenger Transport Executives see PARA 64 et seq post.

UPDATE

63 Passenger transport areas, authorities and executives in England

NOTE 1--Local Government Act 1985 s 42(1)(c) repealed: Local Transport Act 2008 ss 98(2)(b), 131, Sch 7 Pt 4.

TEXT AND NOTES 1-3--Reference to passenger transport areas now to integrated transport areas: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247.

NOTE 4--Reference to a Passenger Transport Authority now to an Integrated Transport Authority: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247.

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(B) PASSENGER TRANSPORT EXECUTIVES IN ENGLAND

64. Railway functions of Passenger Transport Executives in England.

The Secretary of State¹ must:

- 193 (1) before issuing an invitation to tender for a franchise agreement² in a case in which the services to be provided under the agreement are or include services in which a Passenger Transport Executive³ for an area in England⁴ have an interest⁵; or
- 194 (2) before entering into a franchise agreement in respect of such services in a case in which no such invitation has been issued⁶,

consult the Passenger Transport Executive for that area⁷. A Passenger Transport Executive for a passenger transport area in England and the Secretary of State may enter into arrangements under which one or both of the following occur:

- 195 (a) sums become due from the Passenger Transport Executive to the Secretary of State in respect of services for the carriage of passengers by railway within that area or in respect of station services⁸ or bus substitution services⁹ provided within that area¹⁰; and
- 196 (b) the Secretary of State undertakes to exercise or perform his powers and duties in relation to or in connection with such services in a particular way¹¹.

A Passenger Transport Executive for a passenger transport area in England may enter into agreements for purposes relating to or connected with the provision, by a person who is a franchisee¹² or franchise operator¹³ in relation to a franchise agreement, of: (i) services for the carriage of passengers by railway within that area¹⁴; and (ii) station services provided for purposes connected with any such services¹⁵. However, a Passenger Transport Executive for a passenger transport area in England may not enter into an agreement¹⁶:

- 197 (A) with a person who is a franchisee or franchise operator in relation to a franchise agreement¹⁷; or
- 198 (B) with a person who is proposing to become such a franchisee or franchise operator¹⁸,

unless the agreement is approved by the Secretary of State¹⁹. The Secretary of State may give a general approval²⁰ in relation to a description of agreements, as well as specific approvals for particular agreements²¹; and withdraw his approval in relation to any agreement at any time before the agreement is entered into²². The agreements to which a Passenger Transport Executive for a passenger transport area in England may become a party with the approval of the Secretary of State include franchise agreements under which services are provided which are or include services for the carriage of passengers by railway within that area²³.

The Secretary of State and the Passenger Transport Executive for a passenger transport area in England must each provide to the other any information which the other reasonably requires for purposes connected with his or its functions in relation to railways²⁴ or railway services²⁵;

and which is information which it would have been lawful for him or (as the case may be) it to disclose²⁶.

1 As to the Secretary of State see PARA 35 ante.

2 For the meaning of 'franchise agreement' see PARA 130 note 4 post; definition applied by the Railways Act 2005 s 58(2).

3 For the purposes of the Railways Act 2005, a reference to a Passenger Transport Authority, to a Passenger Transport Executive or to a passenger transport area is a reference to the Authority, Executive or area which is such an Authority, Executive or area for the purposes of the Transport Act 1968 Pt II (ss 9-23A) (as amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247); Railways Act 2005 s 58(3). As to passenger transport areas, Authorities and Executives generally see PARA 63 ante.

At the date at which this volume states the law, the Local Transport Bill (2007-08) which is before Parliament proposes a means for making changes to existing constitutional arrangements for the discharge of statutory transport functions in local authority areas, including proposals to change the name 'Passenger Transport Authority' to 'Integrated Transport Authority', to allow changes to be made to the constitutions and functions of the renamed Authorities and to allow changes to be made to the boundaries of existing integrated transport areas.

4 For the meaning of 'England' see PARA 29 note 3 ante.

5 Railways Act 2005 s 13(1)(a). For these purposes, the services in which a Passenger Transport Executive has an interest are: (1) services for the carriage of passengers by railway within the passenger transport area of that Executive (s 13(2)(a)); and (2) services which are not such services but are services for the carriage of passengers by railway to or from such an area (s 13(2)(b)). A reference to a service for the carriage of passengers by railway within a passenger transport area is a reference to a service for the carriage of passengers by railway between places in that area or between places in that area and places outside it which are within the permitted distance, where 'permitted distance' has the same meaning as in the Transport Act 1968 s 10(1)(ii) (as amended) (ie the distance of 25 miles from the nearest point on the boundary of the passenger transport area: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 249): see the Railways Act 2005 s 13(9). For the meaning of 'railway' see PARA 82 note 2 post; definition applied by s 58(2). For the meaning of 'services for the carriage of passengers by railway' generally see PARA 82 note 2 post; definition applied by s 58(2).

6 Ibid s 13(1)(b).

7 Ibid s 13(1).

8 For these purposes, a reference to station services provided within a passenger transport area is a reference to station services provided in connection with any such service for the carriage of passengers by railway: ibid s 13(9). For the meaning of 'station services' see PARA 82 note 5 post; definition applied by s 58(2).

9 For these purposes, a reference to a bus substitution service provided within a passenger transport area is a reference to a bus substitution service for the carriage of passengers between places in that area or between places in that area and places outside it which are within the permitted distance: ibid s 13(9). For the meaning of 'bus substitution services' see PARA 72 note 3 post; definition applied by s 58(2).

10 Ibid s 13(3)(a). Sums received by the Secretary of State by virtue of s 13(3) must be paid into the Consolidated Fund: s 55(2)(c). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

11 Ibid s 13(3)(b).

12 For the meaning of 'franchisee' see PARA 130 note 4 post; definition applied by ibid s 58(2).

13 For the meaning of 'franchise operator' see PARA 130 note 4 post; definition applied by ibid s 58(2).

14 Ibid s 13(4)(a).

15 Ibid s 13(4)(b).

16 Ibid s 13(5). The text refers to an agreement entered into whether by virtue of s 13(4) (see the text and notes 12-15 supra) or otherwise: see s 13(5).

17 Ibid s 13(5)(a).

18 Ibid s 13(5)(b).

19 Ibid s 13(5).

20 Ie for the purposes of ibid s 13(5) (see the text and notes 16-19 supra): see s 13(6)(a).

21 Ibid s 13(6)(a).

22 Ibid s 13(6)(b).

23 Ibid s 13(7).

24 For the meaning of 'railway' see PARA 82 note 2 post; definition applied by ibid s 58(2).

25 Ibid s 13(8)(a). For the meaning of 'railway services' see PARA 82 post; definition applied by s 58(2).

26 Ibid s 13(8)(b). The text refers to information which it would have been lawful for the Secretary of State or (as the case may be) the Passenger Transport Executive for a passenger transport area in England to disclose apart from s 13(8): see s 13(8)(b). As to the duty of Passenger Transport Executives to advise the Secretary of State see PARA 65 post.

UPDATE

64 Railway functions of Passenger Transport Executives in England

TEXT AND NOTES--Reference to a passenger transport area is now to an integrated transport area: Railways Act 2005 s 13(2)-(5), (7)-(9) (amended by the Local Transport Act 2008 Sch 4 para 66(2)).

NOTE 3--Railways Act 2005 s 58(3) amended: Local Transport Act 2008 Sch 4 para 66(4).

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65. Duty of Passenger Transport Executives in England to advise Secretary of State.

It is the duty of a Passenger Transport Executive¹ to comply with every requirement of the Secretary of State² to provide him with advice about a matter connected with a function³ or other activity of his in relation to railways⁴ or railway services⁵.

A Passenger Transport Executive is not so required to do anything⁶ to the extent that it would involve an unreasonable administrative burden for the Executive⁷.

1 As to the meaning of references to a Passenger Transport Executive see PARA 64 note 3 ante.

2 As to the Secretary of State see PARA 35 ante.

3 As to the meaning of 'function' see PARA 7 note 12 ante; definition applied by the Railways Act 2005 s 58(2).

4 For the meaning of 'railway' see PARA 82 note 2 post; definition applied by *ibid* s 58(2).

5 *Ibid* s 52(1). References in s 52 to the functions of the Secretary of State in relation to railways or railway services include references, in particular, to all his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended) (see PARA 33 et seq ante), the Transport Act 2000 Pt 4 (ss 212-254) (as amended) (see PARA 44 et seq ante) or the Railways Act 2005, but do not include references to any functions of his so far as they are exercisable, or fall to be performed, for or in connection with the railway safety purposes: s 52(4). For these purposes, 'railway safety purposes' has the same meaning as in s 2, Sch 3 (see PARA 196 post): see s 52(4). For the meaning of 'railway services' see PARA 82 post; definition applied by s 58(2). The Office of Rail Regulation also has a duty to assist and advise national authorities: see PARA 58 ante.

6 *Ie* under *ibid* s 52: see s 52(2).

7 *Ibid* s 52(2). In determining the extent to which anything would involve an unreasonable administrative burden regard must be had (where relevant) to so much of whatever else the Passenger Transport Executive is required to do under s 52 as it has accepted does not involve such a burden: s 52(3).

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(C) TRANSPORT FOR LONDON

66. Establishment etc of Transport for London.

The Greater London Authority¹ has a general transport duty² and for these purposes Transport for London was established³ with various functions including the provision of public passenger transport services to, from or within Greater London⁴.

1 The Authority established under the Greater London Authority Act 1999: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

2 See *ibid* s 141 (general transport duty); and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 197, 262. The Greater London Authority's particular transport responsibilities are set out in Pt IV (ss 141-303) (as amended): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 197 et seq. As to railways in relation to Transport for London see Pt IV Ch VI (ss 198-209) (as amended); and LONDON GOVERNMENT.

3 As to the establishment of Transport for London see *ibid* ss 154, 297-303; and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 218, 269-277. As to the constitution and status of Transport for London see ss 154, 156, Schs 10-11 (Sch 10 as amended); and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 278-285.

4 See *ibid* s 173; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 299. As to the functions, powers and duties of Transport for London generally see ss 155-178 (as amended), Schs 11-13; and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 286-321. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

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67. Railway functions of Transport for London.

It is the duty of Transport for London¹ (either acting directly, or acting through a subsidiary²) and the Secretary of State³ to co-operate with one another in the exercise and performance of their respective functions for the purpose of⁴:

- 199 (1) co-ordinating the passenger transport services for persons travelling to, from and within Greater London⁵ which are provided by Transport for London or by any of its subsidiaries, and which are provided under franchise agreements⁶, or are secured services⁷ provided by or on behalf of the Secretary of State⁸; and
- 200 (2) securing or facilitating the general duties⁹ of Transport for London¹⁰.

For the purposes of the co-operation so required¹¹, Transport for London and the Secretary of State may enter into such arrangements with one another with respect to the exercise and performance of their respective functions on such terms as may appear to them to be expedient¹². Those arrangements may include arrangements under which sums become due from Transport for London to the Secretary of State¹³:

- 201 (a) in respect of London railway passenger services¹⁴;
- 202 (b) in respect of station services¹⁵ provided in connection with such services¹⁶; or
- 203 (c) in respect of bus substitution services¹⁷ provided as alternatives for London railway passenger services¹⁸.

The Secretary of State and Transport for London must each provide to the other any information¹⁹:

- 204 (i) which the other reasonably requires for a purpose mentioned either in head (1) or in head (2) above²⁰; and
- 205 (ii) which is information which it would have been lawful for him or (as the case may be) it to disclose²¹.

The Secretary of State must²²:

- 206 (A) before issuing an invitation to tender for a franchise agreement in a case in which the services to be provided under the agreement are or include London railway passenger services²³; or
- 207 (B) before entering into a franchise agreement in respect of such services in a case in which no such invitation has been issued²⁴,

consult Transport for London²⁵. However, Transport for London may not enter into an agreement either with a person who is a franchisee²⁶ or franchise operator²⁷ in relation to a franchise agreement²⁸, or with a person who is proposing to become such a franchisee or franchise operator²⁹, unless the agreement is approved by the Secretary of State³⁰. The Secretary of State may give a general approval for these purposes³¹ in relation to a description

of agreements, as well as specific approvals for particular agreements³², and he may withdraw his approval in relation to any agreement at any time before the agreement is entered into³³.

Where a public passenger transport service is provided either under an agreement entered into by Transport for London³⁴ or under a transport subsidiary's agreement³⁵ by a person other than a subsidiary of Transport for London, it is the duty of that person and the other party to the agreement in question, either acting directly or acting indirectly through subsidiaries of theirs, to co-operate with one another in the exercise and performance of their respective functions for the purposes of³⁶ the co-ordinating of passenger transport services³⁷, and the securing of, or the facilitating of, the proper discharge of the general duties³⁸ of Transport for London³⁹.

1 As to the establishment of Transport for London see PARA 66 ante. As to railways in relation to Transport for London generally see LONDON GOVERNMENT.

2 For these purposes, 'subsidiary' has the same meaning as in the Companies Act 1985 s 736 (definition as substituted; prospectively repealed) (see further COMPANIES vol 14 (2009) PARA 25): Greater London Authority Act 1999 s 424(1).

3 As to the Secretary of State see PARA 35 ante.

4 Greater London Authority Act 1999 s 175(1) (amended by the Railways Act 2005 ss 15(1), (2), 59(6), Sch 13 Pt I). The references in the Greater London Authority Act 1999 s 175(1) (as amended) and s 175(2) (as amended) (see the text and notes 11-12 infra) to the functions of the Secretary of State must be taken as a reference to his functions under the Railways Act 1993 ss 23-31 (as amended) (franchising of passenger services: see PARA 130 et seq), and the duties imposed upon him by the Railways Act 2005 ss 22-24 (network modifications etc: see PARA 145 et seq post), to secure the provision of services: Greater London Authority Act 1999 s 175(3) (amended by the Railways Act 2005 ss 15(1), (6), 59(1), Sch 12 para 14(1), (2)(b)).

5 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

6 For the meaning of 'franchise agreement' see PARA 130 note 4 post; definition applied by the Greater London Authority Act 1999 s 175(3B) (added by the Railways Act 2005 s 15(1), (7)).

7 Ie within the meaning of the Railways Act 2005 Pt 4 (ss 22-45) (see PARA 145 note 1 post): see the Greater London Authority Act 1999 s 175(1)(a) (as amended: see note 8 infra).

8 Ibid s 175(1)(a) (amended by the Railways Act 2005 Sch 12 para 14(1), (2)(a)).

9 Ie under the Greater London Authority Act 1999 s 154(3) (duty of Transport for London to exercise its functions: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 270): see s 175(1)(b).

10 Ibid s 175(1)(b).

11 Ie under ibid s 175(1) (as amended) (see the text and notes 1-10 supra): see s 175(2) (as amended: see note 12 infra).

12 Ibid s 175(2) (amended by the Railways Act 2005 s 15(1), (4)). See note 4 supra.

13 Greater London Authority Act 1999 s 175(2A) (added by the Railways Act 2005 s 15(1), (5)).

14 Greater London Authority Act 1999 s 175(2A)(a) (as added: see note 13 supra). A reference in s 175 (as amended) to a London railway passenger service is a reference either to a service for the carriage of passengers by railway between places in Greater London or to a service for the carriage of passengers by railway between places in Greater London and places outside Greater London: s 175(3A) (added by the Railways Act 2005 s 15(1), (7)). For the meanings of 'railway' and 'service for the carriage of passengers by railway' see PARA 82 note 2 post; definitions applied by the Greater London Authority Act 1999 s 175(3B) (as added: see note 6 supra).

15 For the meaning of 'station services' see PARA 82 note 5 post; definition applied by ibid s 175(3B) (as added: see note 6 supra).

16 Ibid s 175(2A)(b) (as added: see note 13 supra).

17 For the meaning of 'bus substitution services' see PARA 72 note 3 post; definition applied by ibid s 175(3B) (as added: see note 6 supra).

- 18 Ibid s 175(2A)(c) (as added: see note 13 supra).
- 19 Ibid s 175(1B) (added by the Railways Act 2005 s 15(1), (3)).
- 20 Greater London Authority Act 1999 s 175(1B)(a) (as added: see note 19 supra).
- 21 Ibid s 175(1B)(b) (as added: see note 19 supra). The text refers to information which it would have been lawful for the Secretary of State or (as the case may be) Transport for London to disclose apart from s 175(1B) (as added): see s 175(1B)(b) (as so added).
- 22 Ibid s 175(1A) (added by the Railways Act 2005 s 15(1), (3)).
- 23 Greater London Authority Act 1999 s 175(1A)(a) (as added: see note 22 supra).
- 24 Ibid s 175(1A)(b) (as added: see note 22 supra).
- 25 Ibid s 175(1A) (as added: see note 22 supra).
- 26 For the meaning of 'franchisee' see PARA 130 note 4 post; definition applied by the Railways Act 2005 s 58(2).
- 27 For the meaning of 'franchise operator' see PARA 130 note 4 post; definition applied by ibid s 58(2).
- 28 Ibid s 16(2)(a). For the meaning of 'franchise agreement' see PARA 130 note 4 post; definition applied by s 58(2).
- 29 Ibid s 16(2)(b).
- 30 Ibid s 16(2). The agreements to which Transport for London may become a party with the approval of the Secretary of State include franchise agreements under which services are provided which are or include services for the carriage of passengers by railway between places in Greater London: s 16(5). An agreement that relates exclusively to the grant of permission by a facility owner for a person to use a railway facility of his does not require the approval of the Secretary of State under s 16(2) in any case in which Transport for London or a subsidiary of its is the facility owner or the person granted permission: s 16(3). For these purposes, 'subsidiary' has the same meaning as in the Companies Act 1985 s 736 (definition as substituted; prospectively repealed) (see further COMPANIES vol 14 (2009) PARA 25); Railways Act 2005 s 16(6). For the meaning of 'facility owner' see PARA 102 note 1 post; definition applied by s 58(2). For the meaning of 'railway facility' see PARA 102 note 1 post; definition applied by s 58(2).
- As to franchise agreements in relation to passenger services generally see PARA 130 et seq post.
- 31 Ie for the purposes of ibid s 16(2) (see the text and notes 26-30 supra): see s 16(3)(a).
- 32 Ibid s 16(4)(a).
- 33 Ibid s 16(4)(b).
- 34 Greater London Authority Act 1999s 176(1)(a). The text refers to an agreement entered into by Transport for London under s 156(2) or s 156(3)(a) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 287): see s 176(1)(a).
- 35 Ibid s 176(1)(b). For the meaning of 'transport subsidiary's agreement' see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 288.
- 36 Ibid s 176(1). The duty of co-operation imposed by s 176(1) requires both parties to an agreement under s 156(2) or s 156(3)(a) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 287) or to a transport subsidiary's agreement to provide to one another such information as to their services as may reasonably be required for the purposes specified in s 176(2) (see the text and notes 37-39 infra): s 176(3).
- 37 Ibid s 176(2)(a).
- 38 Ie under ibid s 154(3) (duty of Transport for London to exercise its functions: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 270): see s 176(2)(b).
- 39 Ibid s 176(2)(b).

UPDATE

67 Railway functions of Transport for London

NOTE 30--Railways Act 2005 s 16(6), definition of 'subsidiary' amended: SI 2009/1941.

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D. RAIL PASSENGERS' COUNCIL

68. Constitution of the Rail Passengers' Council.

The body corporate known as the Rail Passengers' Council¹ consists of:

- 208 (1) a chairman appointed by the Secretary of State²;
- 209 (2) a member appointed by the Scottish Ministers³;
- 210 (3) a member appointed by the Welsh Ministers⁴;
- 211 (4) a member appointed by the London Assembly⁵ from the members of the London Transport Users' Committee⁶; and
- 212 (5) not more than 12 other members appointed by the Secretary of State after consultation with the chairman⁷.

The chairman and other members of that Council⁸: (a) each hold and vacate office in accordance with the terms and conditions of his appointment⁹; and (b) on ceasing to hold office, are eligible for re-appointment¹⁰. The consent of the Secretary of State is required for the terms and conditions of an appointment under head (2) or head (3) above¹¹; and the London Assembly must consult the Secretary of State before fixing the terms and conditions of an appointment under head (4) above¹².

The Rail Passengers' Council must pay to every member¹³ the remuneration and allowances that are provided for by the terms and conditions of his appointment¹⁴; and must pay, or make provision for paying, to or in respect of every member¹⁵ such sums by way of pensions or allowances as are payable in accordance with his terms and conditions of appointment¹⁶. If a person ceases to be a member of that Council¹⁷, and it appears to the Secretary of State that there are special circumstances that make it right for the person to receive compensation¹⁸, the Council must make a payment to that person of such amount as the Secretary of State determines¹⁹.

1 See the Railways Act 2005 s 19(1). As to the establishment etc of the Rail Passengers' Council see PARA 48 ante. The Rail Passengers' Council is not to be treated either as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown (s 19(10), Sch 5 para 13(1)); and the property of the Rail Passengers' Council is not to be regarded as property of the Crown or as held on behalf of the Crown (Sch 5 para 13(2)). For the meaning of 'body corporate' see PARA 7 note 4 ante; definition applied by s 58(2).

The Rail Passengers' Council is subject to investigation by the Parliamentary Commissioner for Administration: see the Parliamentary Commissioner Act 1967 s 4(1) (as substituted), Sch 2 (as substituted and amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43. The administrative and departmental records of the Rail Passengers' Council are public records, whether or not they are records belonging to Her Majesty: see the Public Records Act 1958 s 10(1), Sch 1 para 3 Table Pt II (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835.

2 Railways Act 2005 s 19(2)(a). As to the Secretary of State see PARA 35 ante.

3 Ibid s 19(2)(b). As to the Scottish Ministers see PARA 124 note 7 post.

4 Ibid s 19(2)(c). As to the Welsh Ministers see PARA 35 ante.

5 As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82 et seq.

6 Railways Act 2005 s 19(2)(d). As to the London Transport Users' Committee see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 322 et seq.

7 Ibid s 19(2)(e).

8 Ibid s 19(3).

9 Ibid s 19(3)(a).

10 Ibid s 19(3)(b).

11 Ibid s 19(4).

12 Ibid s 19(5).

13 Ie other than the one appointed by the London Assembly: see ibid Sch 5 para 2(1). The London Transport Users' Committee must pay to the member appointed by the London Assembly the remuneration and allowances that are provided for by the terms and conditions of his appointment: Sch 5 para 2(2). See note 14 infra. For these purposes, 'member' means the chairman or another member of the Rail Passengers' Council: Sch 5 para 1.

14 Ibid Sch 5 para 2(1).

Any member of the Rail Passengers' Council in receipt of remuneration is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (as amended); and PARLIAMENT vol 78 (2010) PARA 908.

15 Ie other than the member appointed by the London Assembly: see the Railways Act 2005 Sch 5 para 2(3). The London Transport Users' Committee must pay, or make provision for paying, to or in respect of the member appointed by the London Assembly such sums by way of pensions or allowances as are payable in accordance with his terms and conditions of appointment: Sch 5 para 2(4).

16 Ibid Sch 5 para 2(3).

17 Ibid Sch 5 para 2(5)(a).

18 Ibid Sch 5 para 2(5)(b).

19 Ibid Sch 5 para 2(5).

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69. Staff of the Rail Passengers' Council.

The Rail Passengers' Council¹ may employ such persons, on such terms and conditions (including terms and conditions as to remuneration), as it may determine²; and that Council may:

- 213 (1) pay such pensions, allowances or gratuities³ as it may determine to or in respect of persons who are or have been employees of the Council⁴;
- 214 (2) make such payments as it may determine towards provision for the payment of pensions, allowances or gratuities to or in respect of such persons⁵; or
- 215 (3) provide and maintain such schemes (whether contributory or not) as it may determine for the payment of pensions, allowance or gratuities to or in respect of such persons⁶.

The persons to whom superannuation schemes as respects persons employed in the civil service⁷ apply include employees of the Rail Passengers' Council⁸. The Minister for the Civil Service may, to such extent and subject to such conditions as he thinks fit, delegate to that Council the function of administering such a scheme⁹, so far as relating to employees of the Council¹⁰; and, if he does so, the Council may authorise the carrying out of that function, to such extent and subject to such conditions as it may determine, either by a person nominated by it or by the employees of a person so nominated¹¹.

1 As to the establishment etc of the Rail Passengers' Council see PARA 48 ante.

2 Railways Act 2005 s 19(10), Sch 5 para 3.

3 The pensions, allowances or gratuities referred to in *ibid* Sch 5 para 4(1) (see heads (1) to (3) in the text) include pensions, allowances or gratuities by way of compensation in respect of loss of employment or loss or diminution of emoluments: Sch 5 para 4(2).

4 *Ibid* Sch 5 para 4(1)(a).

5 *Ibid* Sch 5 para 4(1)(b). See note 3 *supra*.

6 *Ibid* Sch 5 para 4(1)(c). See note 3 *supra*.

7 *Ie* the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

8 Railways Act 2005 Sch 5 para 5(1). If an employee of the Rail Passengers' Council is a participant in a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) by reference to his employment by the Rail Passengers' Council, and if he becomes a member of that Council, the Minister for the Civil Service may determine that his service as a member of the Council is to be treated for the purposes of the scheme as service as an employee of the Council: Railways Act 2005 Sch 5 para 5(2). The Council must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to Sch 5 para 5(1) or Sch 5 para 5(2) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Railways Act 2005 Sch 5 para 5(3). For the meaning of 'member' see PARA 68 note 13 *ante*. As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 395, 427.

9 *Ie* a scheme under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

10 Railways Act 2005 Sch 5 para 5(4).

11 Ibid Sch 5 para 5(5). Acts or omissions by or in relation to a person nominated for the purposes of Sch 5 para 5(5) (or an employee of a person so nominated) must be treated for all purposes, so far as they are acts or omissions in or in connection with what he is authorised to carry out, as acts or omissions by or in relation to the Rail Passengers' Council (Sch 5 para 5(6)), except for the purposes of criminal proceedings against the nominated person (or an employee of his) or for the purposes of a contract between him and that Council so far as relating to the function (Sch 5 para 5(7)).

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70. Finances of the Rail Passengers' Council.

The Secretary of State¹ may make grants to the Rail Passengers' Council² of such amounts as he may determine³; and he may give a direction to the Council requiring it to pay him a sum specified in the direction⁴.

The Rail Passengers' Council must keep proper accounts and proper accounting records⁵ and, in respect of each financial year⁶, prepare a statement of its accounts⁷. Every statement of accounts so prepared⁸ must give a true and fair view of the Council's income and expenditure for the financial year in question and its state of affairs⁹ and comply with every requirement which the Secretary of State has notified to the Council¹⁰. The requirements so notified¹¹ may include, in particular, requirements relating to:

- 216 (1) the information to be contained in the statement¹²;
- 217 (2) the manner in which that information is to be presented¹³; and
- 218 (3) the methods and principles according to which the statement is to be prepared¹⁴.

The statement of accounts and other accounts of the Rail Passengers' Council relating to each financial year must be audited by the Comptroller and Auditor General¹⁵; and the Council must send the Secretary of State a copy of the accounts so audited¹⁶ and the report of the Comptroller and Auditor General¹⁷.

The Secretary of State must prepare¹⁸, and may from time to time revise¹⁹, a document to be known as the Rail Passengers' Council's 'financial framework'²⁰. The financial framework must specify rules and principles according to which the Council is to exercise and perform its powers and duties in relation to both financial matters²¹ and matters relating to its employees²². The Council must not carry out any of its functions in a manner which is inconsistent with its financial framework²³.

As soon as practicable after the end of each financial year, the Rail Passengers' Council must make a report on its activities during that year²⁴. In preparing its annual report, the Council must have regard to the desirability of excluding from the report, so far as practicable²⁵:

- 219 (a) matters relating to the affairs of an individual which, in the opinion of the Council, are matters the publication of which would or might seriously and prejudicially affect the interests of that individual²⁶; and
- 220 (b) matters relating specifically to the affairs of a particular body of persons (whether corporate or unincorporate) which, in the opinion of the Council, are matters the publication of which would or might seriously and prejudicially affect the interests of that body²⁷.

The Rail Passengers' Council must send a copy of every such annual report to each of the Secretary of State²⁸, the Scottish Ministers²⁹ and the Welsh Ministers³⁰; and may also arrange for a copy of its annual report for a financial year to be published in such manner as it considers appropriate³¹.

1 As to the Secretary of State see PARA 35 ante.

- 2 As to the establishment etc of the Rail Passengers' Council see PARA 48 ante.
- 3 Railways Act 2005 s 19(10), Sch 5 para 6(1). The terms of the grants are to be such as the Secretary of State may determine: Sch 5 para 6(2).
- 4 Ibid Sch 5 para 7(1). Before giving such a direction, the Secretary of State must consult both the Treasury and the Rail Passengers' Council: Sch 5 para 7(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.
Sums received by the Secretary of State by virtue of Sch 5 para 7 must be paid into the Consolidated Fund: s 55(2)(d). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.
- 5 Ibid Sch 5 para 8(1)(a). For these purposes, 'accounting records' includes all books, papers and other records of the Rail Passengers' Council relating to the accounts which it is required to keep or matters dealt with in those accounts: Sch 5 para 1.
- 6 For these purposes, 'financial year' means the period beginning with the establishment of the Rail Passengers' Council and ending with the following 31 March or a subsequent period of 12 months ending with 31 March: ibid Sch 5 para 1.
- 7 Ibid Sch 5 para 8(1)(b).
- 8 Ie prepared under ibid Sch 5 para 8(1)(b) (see the text and notes 6-7 supra): see Sch 5 para 8(2).
- 9 Ibid Sch 5 para 8(2)(a).
- 10 Ibid Sch 5 para 8(2)(b).
- 11 Ie under ibid Sch 5 para 8(2)(b) (see the text and note 10 supra): see Sch 5 para 8(3).
- 12 Ibid Sch 5 para 8(3)(a).
- 13 Ibid Sch 5 para 8(3)(b).
- 14 Ibid Sch 5 para 8(3)(c).
- 15 Ibid Sch 5 para 9(1). The Comptroller and Auditor General must send the Rail Passengers' Council a copy of his report on the accounts audited under Sch 5 para 9(1): Sch 5 para 9(2). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.
- 16 Ie audited under ibid Sch 5 para 9(1) (see the text and note 15 supra): see Sch 5 para 9(3).
- 17 Ibid Sch 5 para 9(3). The Secretary of State must lay a copy of the documents sent to him under Sch 5 para 9(3) before Parliament: Sch 5 para 9(4).
- 18 Ibid Sch 5 para 10(1)(a).
- 19 Ibid Sch 5 para 10(1)(b).
- 20 Ibid Sch 5 para 10(1).
- 21 Ibid Sch 5 para 10(2)(a).
- 22 Ibid Sch 5 para 10(2)(b).
- 23 Ibid Sch 5 para 10(3). The fact that a transaction entered into by the Council constitutes, or involves, a contravention of Sch 5 para 10(3) does not invalidate the transaction (Sch 5 para 10(4)); and this applies whether or not a person who entered into the transaction with the Council inquired whether the transaction constituted or involved a contravention of Sch 5 para 10(3) (Sch 5 para 10(5)). For these purposes, 'contravention' includes a failure to comply; and cognate expressions must be construed accordingly: s 58(1).
- 24 Ibid Sch 5 para 11(1).
- 25 Ibid Sch 5 para 11(2).
- 26 Ibid Sch 5 para 11(2)(a).

27 Ibid Sch 5 para 11(2)(b).

28 Ibid Sch 5 para 11(3)(a). The Secretary of State must lay before Parliament a copy of every annual report a copy of which has been sent to him under Sch 5 para 11: Sch 5 para 11(5).

29 Ibid Sch 5 para 11(3)(b). The Scottish Ministers must lay before the Scottish Parliament a copy of every annual report a copy of which has been sent to them under Sch 5 para 11: Sch 5 para 11(6). As to the Scottish Ministers see PARA 124 note 7 post.

30 Ibid Sch 5 para 11(3)(c). As to the Welsh Ministers see PARA 35 ante.

31 Ibid Sch 5 para 11(4).

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71. Procedure of the Rail Passengers' Council.

The Rail Passengers' Council¹ may² regulate its own procedure³.

The Council must meet when convened by the chairman⁴; and the chairman may convene a meeting of the Council whenever he thinks fit⁵. However, the chairman must convene meetings of the Council so that it meets at least twice a year⁶ and he must convene a meeting whenever three members of the Council require him to do so⁷. The Council must secure that minutes are kept of the proceedings at every of its meetings⁸ and that copies of those minutes are sent to the Secretary of State⁹. The validity of the Council's proceedings is not to be affected either by a vacancy in its membership¹⁰ or by a defect in the appointment of a member¹¹.

Meetings of the Rail Passengers' Council must be open to the public¹². However, the public must be excluded during any item of business which is confidential for these purposes as follows¹³:

- 221 (1) where, if members of the public were to be present during that item, it is likely that information furnished in confidence to the Council by either the Office of Rail Regulation¹⁴ or by the Secretary of State, would be disclosed in breach of the obligation of confidence¹⁵;
- 222 (2) where the Council has resolved that, because of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded during that item¹⁶;
- 223 (3) where, if members of the public were to be present during that item, it is likely that there would be disclosed to them a matter relating to the affairs of an individual or relating specifically to the affairs of a particular body (whether corporate or unincorporate) and it is likely that public disclosure of the matter would (or might, in the opinion of the Council) seriously and prejudicially affect the interests of that individual or body¹⁷;
- 224 (4) where the circumstances are specified for these purposes in an order made by the Secretary of State¹⁸, or are determined to be confidential for those purposes in accordance with an order so made¹⁹.

The Council must give such notice²⁰ of any of its meetings which is open to the public²¹, and of the business to be taken at that meeting (other than items during which the public is to be excluded)²², as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public²³.

The application of the seal of the Rail Passengers' Council must be authenticated by the signature²⁴ of a member or employee of the Council whom it has authorised for the purpose (whether generally or specifically)²⁵. Any document which the Council is authorised or required by or under any enactment to serve, make or issue may be signed on its behalf by a member or employee whom it has authorised for the purpose (whether generally or specifically)²⁶. Every document both purporting to be an instrument made or issued by or on behalf of the Council²⁷, and purporting to be duly executed under the seal of the Council (or to be duly signed or executed by a person authorised by the Council for the purpose)²⁸, must be received in evidence and, unless the contrary is shown, treated without further proof as so made or issued²⁹.

- 1 As to the establishment etc of the Rail Passengers' Council see PARA 48 ante.
- 2 le subject to the Railways Act 2005 s 19(10), Sch 5 paras 15-16 (see the text and notes 3-19 infra): see Sch 5 para 15(1).
- 3 Ibid Sch 5 para 15(1). For these purposes, the power to regulate procedure includes power to make provision about quorums: Sch 5 para 15(2).
- 4 Ibid Sch 5 para 15(3). As to the appointment of the chairman of the Rail Passengers' Council see PARA 68 ante.
- 5 Ibid Sch 5 para 15(4).
- 6 Ibid Sch 5 para 15(5)(a).
- 7 Ibid Sch 5 para 15(5)(b). For the meaning of 'member' see PARA 68 note 13 ante.
- 8 Ibid Sch 5 para 15(6)(a).
- 9 Ibid Sch 5 para 15(6)(b). As to the Secretary of State see PARA 35 ante.
- 10 Ibid Sch 5 para 15(7)(a).
- 11 Ibid Sch 5 para 15(7)(b). As to the appointment of members of the Rail Passengers' Council see PARA 68 ante.
- 12 Ibid Sch 5 para 16(1).
- 13 Ibid Sch 5 para 16(1).
- 14 As to the Office of Rail Regulation generally see PARA 49 et seq ante.
- 15 Railways Act 2005 Sch 5 para 16(2).
- 16 Ibid Sch 5 para 16(3).
- 17 Ibid Sch 5 para 16(4).
- 18 Such an order under ibid Sch 5 para 16(5) is subject to the negative resolution procedure: Sch 5 para 16(6).
- 19 Ibid Sch 5 para 16(5).
- 20 For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by ibid s 58(2).
- 21 Ibid Sch 5 para 17(a).
- 22 Ibid Sch 5 para 17(b).
- 23 Ibid Sch 5 para 17.
- 24 For these purposes, the reference to a signature includes a reference to a facsimile of a signature produced by any process; and 'signed' is to be construed accordingly: ibid Sch 5 para 19(4).
- 25 Ibid Sch 5 para 19(1).
- 26 Ibid Sch 5 para 19(2).
- 27 Ibid Sch 5 para 19(3)(a).
- 28 Ibid Sch 5 para 19(3)(b).
- 29 Ibid Sch 5 para 19(3).

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72. Duty of Rail Passengers' Council to investigate.

It is the duty of the Rail Passengers' Council¹ to investigate any matter which relates²:

- 225 (1) to the provision of railway passenger services³; or
- 226 (2) to the provision of station services⁴ by any person in a case where the operator of the station in question is authorised by a licence⁵ to be the operator of that station⁶,

if the condition specified in heads (a) to (c) below is satisfied in relation to the matter in question⁷, that is:

- 227 (a) if the matter is the subject of a representation made to the Rail Passengers' Council by a user or potential user of railway passenger services and does not appear to the Rail Passengers' Council to be frivolous or vexatious⁸;
- 228 (b) if the matter is referred to the Rail Passengers' Council by the Secretary of State⁹; or
- 229 (c) if the matter appears to the Rail Passengers' Council to be one which it ought to investigate¹⁰.

If, on investigating any matter, the Rail Passengers' Council considers it appropriate to do so, the Rail Passengers' Council must make representations to the person providing the secured service¹¹ which is in question¹² and, in the case of a service provided under a franchise agreement¹³, to the franchisee¹⁴ or, in the case of a service provided on behalf of the Secretary of State, to the Secretary of State¹⁵, about the matter, or any matter to which it relates or which appears to the Rail Passengers' Council to be relevant to the subject of the matter investigated¹⁶. Where the Rail Passengers' Council, having made such representations¹⁷, is of the opinion that it is unable to achieve a satisfactory resolution of the matter by that means¹⁸, or where the Council, on investigating any matter, has reason to believe that a franchisee is contravening¹⁹, or is likely to contravene, any term of the franchise agreement or that the holder of a passenger licence²⁰ or a station licence²¹ is contravening, or is likely to contravene, any condition of the licence²², the Rail Passengers' Council must, unless representations about the matter have been made to the Secretary of State by the Rail Passengers' Council, refer it to the Secretary of State with a view to the Secretary of State exercising such of his powers as he considers appropriate in the circumstances of the case²³. However, if the Secretary of State considers that it would be more appropriate for a matter referred to it by the Rail Passengers' Council to be considered by the Office of Rail Regulation²⁴, the Secretary of State must refer it to the Office of Rail Regulation, with a view to its exercising such of its powers as it considers appropriate in the circumstances of the case²⁵.

Where the Rail Passengers' Council investigates any matter²⁶, it may prepare and send to the Secretary of State a report of its findings²⁷, and it may publish any such report, unless the matter in question is one which was referred to the Rail Passengers' Council by the Secretary of State as mentioned in head (b) above²⁸. Where the Rail Passengers' Council has investigated any matter²⁹, it must³⁰ neither include in any report or representations a proposal for any steps to be taken by any person in relation to that matter³¹, nor refer the matter to the Secretary of State³² by reason only of the failure of any person to take any steps in relation to that matter³³,

unless, balancing the cost of taking those steps against the benefits which the Rail Passengers' Council considers will be enjoyed by any person in consequence of the taking of those steps, the Rail Passengers' Council is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money³⁴.

1 As to the establishment etc of the Rail Passengers' Council see PARA 48 ante.

2 Railways Act 1993 s 76(1) (amended by the Transport Act 2000 s 227, Sch 22 Pt I paras 1, 8(1), (2)).

3 Railways Act 1993 s 76(1)(a) (substituted by the Transport Act 2000 s 228(1), (2)). For these purposes, any reference to railway passenger services includes a reference to bus substitution services required to be provided in place of any such service: Railways Act 1993 s 76(9) (amended by the Transport Act 2000 s 274, Sch 31 Pt IV). The Secretary of State may, after consultation with the Rail Passengers' Council, make an order excluding services from the duties imposed by the Railways Act 1993 s 76 (as amended): s 76(7B) (s 76(7B), (7C) added by the Transport Act 2000 s 228(1), (4)). An order under the Railways Act 1993 s 76(7B) (as added):

50 (1) may exclude services of a particular class or description, particular services or services provided by a particular person (s 76(7B)(a) (as so added));

51 (2) may provide that services are excluded subject to compliance with specified conditions (s 76(7B)(b) (as so added)); and

52 (3) may not revoke an exclusion except for breach of condition or in accordance with the order which made it (s 76(7B)(c) (as so added)).

The Secretary of State may, after consultation with the Rail Passengers' Council, make an order providing that the duties imposed by s 76 (as amended) apply to services of a particular class or description, particular services or services provided by a particular person: (a) only to such extent as is specified by the order (s 76(7C)(a) (as so added)); or (b) with such modifications as are so specified (s 76(7C)(b) (as so added)). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5). For these purposes, 'bus substitution service' means a service for the carriage of passengers by road that is provided as an alternative to the whole or a part of a railway passenger service that has been discontinued, reduced or modified (whether temporarily or permanently): s 83(1) (definition substituted by the Railways Act 2005 s 54(4), Sch 11 paras 1, 13(b)). For the meaning of 'railway passenger service' see PARA 36 note 2 ante. As to the Secretary of State see PARA 35 ante.

The Secretary of State, in exercise of the powers conferred upon him by the Railways Act 1993 s 76(7C) (as added), has made the Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003, SI 2003/1695 (as amended). Accordingly, save in relation to the duties imposed by the Railways Act 1993 s 76(7A) (as added) (as to which see PARA 73 post), exemption is granted to the Rail Passengers' Council from the duties imposed by s 76 (as amended) in relation to the following railway passenger services (see the Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003, SI 2003/1695, arts 3, 5(1) (art 5(1) amended by SI 2005/1737)):

53 (i) railway passenger services which are provided by a passenger service operator which is not required under the terms of its passenger licence to provide through ticketing facilities (Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003, SI 2003/1695, art 5(1)(a)); and

54 (ii) railway passenger services in respect of which the passenger service operator is exempted under the Railways Act 1993 s 7 (as amended) (as to which see PARA 92 post) from the requirement under s 6 (as amended) (as to which see PARA 367 post) to be authorised by licence to operate the railway assets used in the provision of those services (Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003, SI 2003/1695, art 5(1)(b)).

However, art 3 (as amended) does not apply to railway passenger services provided by or on behalf of Docklands Light Railway Limited or London Underground Limited, to railway passenger services provided exclusively on the Metro or to international railway passenger services: art 5(2), Schedule (art 5(2) amended by SI 2005/1737). For these purposes, 'international railway passenger services' means services provided in Great Britain for the carriage of passengers by rail between any place in Great Britain and any place outside Great Britain by way of the tunnel system: Channel Tunnel Act 1987 s 41(6); definition applied by the Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003, SI 2003/1695, art 2. For the meaning of 'Great Britain' see PARA 29 note 3 ante; and for the meaning of 'tunnel system' for these purposes see PARA 109 note 1 post. For the meaning of 'Metro' for these purposes see the Tyne and Wear Passenger Transport Act 1989 s 2(1); definition applied by the Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003, SI 2003/1695, art 2.

4 For the meanings of 'station' and 'station services' see PARA 82 note 5 post.

5 For the meaning of 'licence' see PARA 83 note 6 post.

6 Railways Act 1993 s 76(1)(b). For the meaning of 'operator' see PARA 83 note 7 post.

7 Ibid s 76(1).

8 Ibid s 76(2)(a) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (3)). If any matter falling within the Railways Act 1993 s 76(2)(a) (as amended) appears to the Rail Passengers' Council to relate only to the provision of railway passenger services wholly within the London railway area (within the meaning of the Greater London Authority Act 1999 s 252A (as added): see PARA 48 ante) or to the provision of station services within that area, that Council must refer the matter to the London Transport Users' Committee: Railways Act 1993 s 76(2A) (added by the Railways Act 2005 s 31(3), Sch 6 para 5). As to the London Transport Users' Committee see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 322 et seq.

9 Railways Act 1993 s 76(2)(b) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (3); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 32(1)).

10 Railways Act 1993 s 76(2)(c) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (3)).

11 Ie within the meaning of the Railways Act 2005 Pt 4 (ss 22-45) (see PARA 145 et seq post): see the Railways Act 1993 s 76(4) (as amended). As to the effect of s 76(4) (as amended) see note 12 infra.

12 Ibid s 76(4) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (5)(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 32(2)).

Until a day to be appointed under the Railways Act 2005 s 60(2), the Railways Act 1993 s 76(4) (as amended by the Railways Act 2005 Sch 1 Pt 1 para 32(2)) has effect only in relation to the Railways Act 1993 s 76(4)(b) (as amended) (see the text and note 15 infra); and for the purposes of s 76(4)(a) (see the text and notes 13-14 infra) the reference in the text to 'the secured service which is in question' should be read simply as a reference to 'the service in question': see s 76(4) (as so amended).

13 For the meaning of 'franchise agreement' see PARA 130 note 4 post.

14 Railways Act 1993 s 76(4)(a). For the meaning of 'franchisee' see PARA 130 note 4 post.

15 Ibid s 76(4)(b) (amended by the Railways Act 2005 Sch 1 Pt 1 para 32(1)).

16 Railways Act 1993 s 76(4) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (5)(b)).

17 Ie under the Railways Act 1993 s 76(4) (as amended) (see the text and notes 11-16 supra): see s 76(5)(a).

18 Ibid s 76(5)(a). See note 23 infra.

19 As to the meaning of 'contravention', in relation to any condition or requirement, see PARA 29 note 13 ante.

20 For the meaning of 'passenger licence' see PARA 83 note 9 post.

21 For the meaning of 'station licence' see PARA 83 note 9 post.

22 Railways Act 1993 s 76(5)(b) (amended by the Transport Act 2000 s 228(1), (3)(a)). See note 23 infra.

23 Railways Act 1993 s 76(5) (amended by the Transport Act 2000 s 216, Sch 17 Pt II paras 17, 20(1), (3), Sch 22 Pt I paras 1, 8(1), (6)(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 32(1), (3)(a)).

The Railways Act 1993 s 76(5) (as amended) is applied, with modifications, in relation to holders of European licences and to Statements of National Regulatory Provisions (SNRPs) (as to which see PARA 98 et seq post): see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 17; and PARA 98 post.

24 As to the Office of Rail Regulation generally see PARA 49 et seq ante.

25 Railways Act 1993 s 76(5A) (added by the Transport Act 2000 Sch 17 Pt II paras 17, 20(1), (4); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)-(c), 15; and the Railways Act 2005 Sch 1 Pt 1 para 32(1)).

26 Railways Act 1993 s 76(6) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (7)).

27 Railways Act 1993 s 76(6)(a) (amended by the Railways Act 2005 s 59(6), Sch 1 Pt 1 para 32(4), Sch 13 Pt 1).

28 Railways Act 1993 s 76(6)(b) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (7); and the Railways Act 2005 Sch 1 Pt 1 para 32(1)). The general restrictions on the disclosure of information obtained under or by virtue of the provisions of the Railways Act 1993 are not to be seen as limiting the matters which may be included in, or made public as part of, a report of the Rail Passengers Council under any provision of Pt I (ss 4-83) (as amended): see s 145(5) (as amended); and PARA 419 post.

29 *Ie* under *ibid* s 76 (as amended) (see the text and notes 1-28 *supra*): see s 76(7) (as amended).

30 *Ibid* s 76(7) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (8)(a)).

31 Railways Act 1993 s 76(7)(a).

32 *Ie* under *ibid* s 76(5)(a) (see the text and notes 17-18 *supra*): see s 76(7)(b) (as amended: see note 33 *infra*).

33 *Ibid* s 76(7)(b) (amended by the Railways Act 2005 Sch 1 Pt 1 para 32(1)).

34 Railways Act 1993 s 76(7) (amended by the Transport Act 2000 Sch 22 Pt I paras 1, 8(1), (8)(b)).

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73. Supplementary duties and powers of the Rail Passengers' Council.

The Rail Passengers' Council¹, in addition to its duty to investigate certain matters², also has the duty, so far as it appears expedient from time to time to do so³:

- 230 (1) to keep under review matters affecting the interests of the public in relation to railway passenger services and station services⁴;
- 231 (2) to make representations to, and consult, such persons as it thinks appropriate about those matters⁵; and
- 232 (3) to co-operate with other bodies representing the interests of users of public passenger transport services⁶.

The Rail Passengers' Council and any other public body⁷ may enter into an agreement⁸ for that other body to be responsible, in accordance with the agreement⁹:

- 233 (a) for determining what is expedient¹⁰ in relation to an area specified in the agreement¹¹; and
- 234 (b) for otherwise performing that Council's duties under heads (1) to (3) above in relation to that area¹².

Such an agreement may be entered into on such terms and conditions as the parties to it may agree¹³ and may contain provision for determining for these purposes¹⁴ in what circumstances things done under or for the purposes of heads (1) to (3) above are to be treated as done in relation to the area specified in the agreement¹⁵. So long as such an agreement is in force, the duties of the Rail Passengers' Council under heads (1) to (3) above are deemed, in relation to the area specified in the agreement, to fall on the other party to it, instead of on that Council¹⁶.

The Rail Passengers' Council must give the Secretary of State information, advice and assistance about any matter in respect of which it has any functions if the Council considers it appropriate to do so¹⁷ or if the Secretary of State asks the Council to do so in connection with the carrying out of any function of his¹⁸. If the Secretary of State so directs, the Rail Passengers' Council must establish committees to advise it in relation to the carrying out of its functions in relation to particular areas¹⁹. The members of a committee established in this way are to be appointed by the Council²⁰, and the Council may appoint such persons as it thinks fit²¹. The Council may regulate the procedure of a committee established in this way²².

The Rail Passengers' Council may do anything that appears to it to be likely to facilitate the carrying out of its functions, or to be conducive or incidental to the carrying out of those functions²³. However, the Council must not carry out any of its functions in a manner which is inconsistent with its financial framework²⁴. The Council may make charges for services or facilities that it provides or makes available at a person's request and otherwise than in performance of a duty to do so²⁵.

1 As to the establishment etc of the Rail Passengers' Council see PARA 48 ante.

2 ie under the Railways Act 1993 s 76 (as amended) (see PARA 72 ante): see s 76(7A) (as added: see note 3 infra).

3 Ibid s 76(7A) (s 76(7A), (7A)(a)-(c) added by the Transport Act 2000 s 228(1), (4)).

4 Railways Act 1993 s 76(7A)(a) (as added: see note 3 supra). As to the meaning of references to railway passenger services for these purposes see PARA 72 note 3 ante. For the meaning of 'railway passenger service' generally see PARA 36 note 2 ante; and for the meaning of 'station services' see PARA 82 note 5 post.

The Secretary of State may, after consultation with the Rail Passengers' Council, make an order excluding services from the duties imposed by s 76 (as amended) or providing that the duties so imposed apply restrictively or only with specified modifications: see s 76(7B), (7C) (as added); and PARA 72 note 3 ante. As to the Secretary of State see PARA 35 ante.

5 Ibid s 76(7A)(b) (as added: see note 3 supra).

6 Ibid s 76(7A)(c) (as added: see note 3 supra).

7 For these purposes, 'public body' means any authority or other body on which functions are conferred by or under an enactment: ibid s 76A(5) (s 76A added by the Railways Act 2005 s 20).

8 The consent of the Secretary of State is required before the Rail Passengers' Council and another public body may enter into an agreement under the Railways Act 1993 s 76A (as added): s 76A(4) (as added: see note 7 supra). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

9 Ibid s 76A(1) (as added: see note 7 supra).

10 le for the purposes of ibid s 76(7A) (as added) (see the text and notes 1-6 supra): see s 76A(1)(a) (as added: see note 7 supra).

11 Ibid s 76A(1)(a) (as added: see note 7 supra).

12 Ibid s 76A(1)(b) (as added: see note 7 supra).

13 Ibid s 76A(3)(a) (as added: see note 7 supra).

14 le for the purposes of ibid s 76A (as added): see s 76A(3)(b) (as added: see note 7 supra).

15 Ibid s 76A(3)(b) (as added: see note 7 supra).

16 Ibid s 76A(2)(a) (as added: see note 7 supra). However, so long as an agreement under s 76A (as added) is in force, the Rail Passengers' Council is not to be prevented from doing anything mentioned in s 76(7A) (as added) (see the text and notes 1-6 supra) in relation to the area specified in the agreement: s 76A(2)(b) (as so added).

17 Railways Act 2005 s 19(10), Sch 5 para 12(a).

18 Ibid Sch 5 para 12(b).

19 Ibid Sch 5 para 18(1).

20 Ibid Sch 5 para 18(2).

21 Ibid Sch 5 para 18(3). The membership of the committee may consist of or include persons who are not themselves members of the Council (see Sch 5 para 18(3)); and the Council may reimburse a member of a committee established under Sch 5 para 18 who is not a member of the Council either for travelling expenses or for other out-of-pocket expenses not relating to loss of remuneration (Sch 5 para 18(5)).

22 Ibid Sch 5 para 18(4). As to the procedure of the Rail Passengers' Council generally see PARA 71 ante.

23 Ibid Sch 5 para 14(1).

24 See ibid Sch 5 para 10(3); and PARA 70 ante.

25 Ibid Sch 5 para 14(2).

UPDATE

73 Supplementary duties and powers of the Rail Passengers' Council

TEXT AND NOTES--The Secretary of State may by order make provision conferring functions on the Rail Passengers Council relating to (1) prescribed local services, or local services of a prescribed description, so far as operating in England; (2) prescribed domestic coach services, or domestic coach services of a prescribed description, so far as operating in England; (3) prescribed tramway passenger services, or tramway passenger services of a prescribed description, so far as operating in England; and (4) prescribed passenger transport facilities in England, or passenger transport facilities in England that are of a prescribed description: Railways Act 2005 s 19A(1) (s 19A added by the Local Transport Act 2008 s 74). The power conferred by the Railways Act 2005 s 19A(1) includes a power to amend any enactment for the purposes of making such provision: Railways Act 2005 s 19A(2). An order under s 19A may make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, such an order, or for giving full effect to such an order: Railways Act 2005 s 19A(3). The provision which may be included by virtue of s 19A(3) in an order includes (a) provision for the body established by s 19 to be known by a different name; (b) provision altering the number of persons that may be appointed as members of that body by the Secretary of State under s 19(1)(e); and (c) provision amending, repealing or revoking any provision of the Railways Act 2005 or any other enactment, whenever passed or made: Railways Act 2005 s 19A(4). In a case where an order under s 19A confers on the Rail Passengers Council power to make recommendations or representations to a body or person, the provision which may be included by virtue of s 19A(3) in the order also includes provision conferring on the body or person functions in respect of such recommendations or representations, but only if the new function relates to (i) services of a kind mentioned in s 19A(1)(a)-(c), so far as operating in England; or (ii) passenger transport facilities in England: Railways Act 2005 s 19A(5), (6). Nothing in s 19A provides power to alter the functions of the Rail Passengers Council so far as relating to the provision of railway passenger services or station services: Railways Act 2005 s 19A(7).

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E. RAILWAY HERITAGE COMMITTEE

(A) CONSTITUTION OF THE RAILWAY HERITAGE COMMITTEE

74. Establishment and membership of the Railway Heritage Committee.

The Railway Heritage Committee was established in 1994¹. The Committee² consists of a chairman, and not fewer than six other members, appointed by the Secretary of State³. The Committee may from among its members elect a deputy chairman, who exercises the powers of the chairman in his absence or incapacity, or with his permission⁴.

The Secretary of State must ensure that, so far as reasonably practicable, the members of the Committee at all times include:

- 235 (1) at least one person for the time being appointed under the Public Records Act 1958⁵;
- 236 (2) at least one person for the time being appointed under the Public Registers and Records (Scotland) Act 1948⁶;
- 237 (3) at least one person who appears to the Secretary of State, having regard to the views of the Board of Trustees of the Science Museum⁷, to represent the interest of the National Railway Museum at York⁸; and
- 238 (4) at least two persons (not employed by the same employer) each of whom is employed by one of the bodies to which the Railway Heritage Act 1996 applies⁹.

The chairman and deputy chairman, if any, of the Committee must be persons who do not fall within any of the categories of person mentioned in heads (1) to (4) above¹⁰.

A member of the Committee is appointed¹¹ on such terms as to duration and termination of membership as the Secretary of State determines, and is, on ceasing to be a member, to be eligible for re-appointment¹². However:

- 239 (a) at any time a member of the Committee may resign his membership, or if he is the chairman of the Committee he may resign as chairman, by giving written notice to the Secretary of State¹³;
- 240 (b) the Secretary of State may at any time terminate the membership of any member of the Committee, or the position of a member as the Committee's chairman, by giving written notice to the member¹⁴;
- 241 (c) the deputy chairman of the Committee may at any time resign as deputy chairman by giving notice to the Committee, and the Committee may at any time terminate the position of a member as the deputy chairman¹⁵.

The Committee may set quorums for its meetings and those of any sub-committee¹⁶.

1 The Railway Heritage Committee was established under the Railway Heritage Scheme Order 1994, SI 1994/2032, art 2(1) (revoked), which was made under the Railways Act 1993 s 125 (repealed). However, the Railway Heritage Act 1996 provided for a new statutory regime which established a committee ('the committee') by a scheme under s 2 (as amended): see s 2(1). The scheme provides for the committee to consist

of a chairman, and not less than six other members, appointed by the Secretary of State: s 2(2)(a) (amended by the Railways Act 2005 s 59(1), (6), Sch 12 para 13(1), (4)(a), Sch 13 Pt 1). The scheme may make provision: (1) with respect to the establishment, membership and functions of sub-committees and for anything done by or to a sub-committee to be treated for the purposes of the Railway Heritage Act 1996 as if done by or to the committee (s 2(2)(b)); and (2) for the Secretary of State to provide the committee or any sub-committee with such administrative and secretarial assistance as it may reasonably require; and to reimburse any out-of-pocket expenses duly incurred by the members of the committee or any sub-committee in the performance of their functions (s 2(2)(c) (amended by the Railways Act 2005 Sch 12 para 13(1), (4)(b))). The scheme may confer supplemental and incidental functions on the committee (Railway Heritage Act 1996 s 2(2)(d)); and may contain such other supplemental and incidental provision as the Secretary of State may consider necessary or expedient (s 2(2)(e)). The power to make a scheme under s 2 (as amended) is exercisable by order made by the Secretary of State after consultation with such persons as the Secretary of State may consider appropriate: s 2(3) (amended by the Railways Act 2005 Sch 12 para 13(1), (4)(c)). The power to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Railway Heritage Act 1996 s 2(4). As to the Secretary of State see PARA 35 ante. The Railway Heritage Scheme Order 2005, SI 2005/2905, is made in exercise of the powers conferred by the Railway Heritage Act 1996 s 2 (as amended), and continues to establish the Railway Heritage Committee: see the Railway Heritage Scheme Order 2005, SI 2005/2905, art 2, Schedule para 2(1).

2 For these purposes, 'Committee' means the Railway Heritage Committee and any reference to a sub-committee is to a sub-committee established under *ibid* Schedule para 4(1) (see PARA 76 post): Schedule para 1.

3 *Ibid* Schedule para 2(2).

4 *Ibid* Schedule para 2(3).

5 *Ibid* Schedule para 2(4)(a). The text refers to a person appointed under the Public Records Act 1958 s 2(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 838): see the Railway Heritage Scheme Order 2005, SI 2005/2905, Schedule para 2(4)(a).

6 *Ibid* Schedule para 2(4)(b). The text refers to a person appointed under the Public Registers and Records (Scotland) Act 1948 s 1(1) or 1(4): see the Railway Heritage Scheme Order 2005, SI 2005/2905, Schedule para 2(4)(b).

7 As to the Board of Trustees of the Science Museum see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 875.

8 Railway Heritage Scheme Order 2005, SI 2005/2905, Schedule para 2(4)(c).

9 *Ibid* Schedule para 2(4)(d). As to the bodies to which the Railway Heritage Act 1996 applies see s 1 (as amended); and PARA 78 note 6 post.

10 Railway Heritage Scheme Order 2005, SI 2005/2905, Schedule para 2(5).

11 *Ie* subject to *ibid* Schedule para 2(7)-(9) (see heads (a) to (c) in the text): see Schedule para 2(6).

12 *Ibid* Schedule para 2(6).

13 *Ibid* Schedule para 2(7).

14 *Ibid* Schedule para 2(8).

15 *Ibid* Schedule para 2(9).

16 *Ibid* Schedule para 7.

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75. Proceedings of the Railway Heritage Committee.

The Railway Heritage Committee¹ may determine its own procedure, subject to the following provisions²:

- 242 (1) the Committee must meet when convened by the chairman, and in any case must meet at least once a year³;
- 243 (2) without prejudice to the discretion of the chairman to call a meeting of the Committee whenever he thinks fit, he must call a meeting when requested to do so by not less than half the members of the Committee⁴;
- 244 (3) in the event that neither the chairman of the Committee nor the deputy chairman (if any) attends a meeting of the Committee, another member may, with the agreement of the Committee, act as chairman for the purposes of that meeting⁵;
- 245 (4) where, in respect of any matter, the Committee is unable to reach a decision because of an equality of votes, the chairman or, in his absence, any person acting as chairman has a casting vote⁶;
- 246 (5) subject to any provision for a quorum⁷, the validity of any proceedings of the Committee is not affected by any vacancy amongst the members or by any defect in the appointment of a member⁸;
- 247 (6) the Committee must keep minutes of the proceedings at each of its meetings⁹.

1 As to the establishment of the Railway Heritage Committee see PARA 74 ante.

2 Railway Heritage Scheme Order 2005, SI 2005/2905, art 2, Schedule para 3(1).

3 Ibid Schedule para 3(2). As to the appointment of the chairman see PARA 74 ante.

4 Ibid Schedule para 3(3).

5 Ibid Schedule para 3(4).

6 Ibid Schedule para 3(5).

7 Ie made under ibid Schedule para 7 (see PARA 74 ante); see Schedule para 3(6).

8 Ibid Schedule para 3(6). As to the appointment of members see PARA 74 ante.

9 Ibid Schedule para 3(7).

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76. Establishment, membership, functions and proceedings of sub-committees.

The Railway Heritage Committee¹ may establish and discontinue sub-committees². The chairman and other members of a sub-committee are appointed by the Committee³, which must ensure that at any time at least two members of each sub-committee are members of the Committee⁴.

A member of a sub-committee is appointed⁵ on such terms as to duration and termination of membership as the Committee determines, and, on ceasing to be a member, is eligible for re-appointment⁶. However:

- 248 (1) at any time a member of a sub-committee may resign his membership, or if he is the chairman of the sub-committee he may resign as chairman, by giving notice to the Committee⁷;
- 249 (2) the Committee may at any time terminate the membership of any member of a sub-committee, or the position of a member as the sub-committee's chairman, by giving notice to the member in question⁸.

The Committee may delegate any of its functions to a sub-committee, and may withdraw any such delegation⁹. A sub-committee must comply with the terms of any such delegation by the Committee, and of any direction by the Committee as to the procedure of the sub-committee¹⁰. Anything done by or to a sub-committee is to be treated for the purposes of the Railway Heritage Act 1996 as if done by or to the Committee¹¹.

A sub-committee may determine its own procedure, subject to any direction by the Committee and to the following¹²:

- 250 (a) a sub-committee must meet when convened by its chairman¹³;
- 251 (b) without prejudice to the discretion of the chairman of the sub-committee to call a meeting of the sub-committee, he must call a meeting when requested to do so by not less than half the members of the Committee or of that sub-committee¹⁴;
- 252 (c) in the event that the chairman of a sub-committee does not attend a meeting of the sub-committee, another member may, with the agreement of the sub-committee, act as chairman for the purposes of that meeting¹⁵;
- 253 (d) where, in respect of any matter, a sub-committee is unable to reach a decision because of an equality of votes, the chairman or, in his absence, any person so acting as chairman¹⁶, has a casting vote¹⁷;
- 254 (e) subject to any provision for a quorum¹⁸, the validity of any proceedings of a sub-committee are not affected by any vacancy amongst the members or by any defect in the appointment of a member¹⁹;
- 255 (f) a sub-committee must keep minutes of the proceedings of its meetings²⁰.

1 As to the establishment of the Railway Heritage Committee see PARA 74 ante.

2 Railway Heritage Scheme Order 2005, SI 2005/2905, art 2, Schedule para 4(1).

3 Ibid Schedule para 4(2).

- 4 Ibid Schedule para 4(3).
- 5 le subject to ibid Schedule para 4(5), (6) (see the text and notes 7-8 infra): see Schedule para 4(4).
- 6 Ibid Schedule para 4(4).
- 7 Ibid Schedule para 4(5).
- 8 Ibid Schedule para 4(6).
- 9 Ibid Schedule para 5(1).
- 10 Ibid Schedule para 5(2).
- 11 Ibid Schedule para 5(3).
- 12 Ibid Schedule para 6(1).
- 13 Ibid Schedule para 6(2).
- 14 Ibid Schedule para 6(3).
- 15 Ibid Schedule para 6(4).
- 16 le pursuant to ibid Schedule para 6(4) (see head (c) in the text): see Schedule 6(5).
- 17 Ibid Schedule para 6(5).
- 18 le made under ibid Schedule para 7 (see PARA 74 ante): see Schedule para 6(6).
- 19 Ibid Schedule para 6(6).
- 20 Ibid Schedule para 6(7).

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77. Administration, expenses, records and minutes.

The Secretary of State¹ must provide the Railway Heritage Committee² and any sub-committee³ with such administrative and secretarial assistance as they may reasonably require⁴. The Secretary of State must reimburse any out-of-pocket expenses duly incurred by any member of the Committee, or of a sub-committee, in the performance of his functions⁵.

The Committee must keep records of:

- 256 (1) the records and artefacts, and classes or descriptions of record or artefact, which it and its sub-committees designate, and of the bodies which are notified of such designations⁶; and
- 257 (2) particulars of any consent or direction given by the Committee and its sub-committees⁷ and of the persons to whom such consents or directions are given⁸.

The records referred to in heads (1) and (2) above, and the minutes kept of Committee and sub-committee meetings⁹, are open to public inspection at such place and at such times as the Committee may determine¹⁰.

1 As to the Secretary of State see PARA 35 ante.

2 As to the establishment of the Railway Heritage Committee see PARA 74 ante.

3 As to the establishment, membership, functions and proceedings of sub-committees of the Railway Heritage Committee see PARA 76 ante.

4 Railway Heritage Scheme Order 2005, SI 2005/2905, art 2, Schedule para 8(1).

5 Ibid Schedule para 8(2).

6 Ibid Schedule para 9(1)(a). The text refers to designations and notifications made pursuant to the Railway Heritage Act 1996 s 3 (see PARA 78 post): see the Railway Heritage Scheme Order 2005, SI 2005/2905, Schedule para 9(1)(a).

7 Ie pursuant to the Railway Heritage Act 1996 s 4 (as amended) (see PARA 79 post) see the Railway Heritage Scheme Order 2005, SI 2005/2905, Schedule para 9(1)(b).

8 Ibid Schedule para 9(1)(b).

9 Ie the minutes kept pursuant to ibid Schedule para 3(7) (see PARA 75 ante) and Schedule para 6(7) (see PARA 76 ante): see Schedule para 9(2).

10 Ibid Schedule para 9(2).

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(B) FUNCTIONS OF THE RAILWAY HERITAGE COMMITTEE

78. Designation of records and artefacts.

It is a function¹ of the Railway Heritage Committee²:

258 (1) to designate³ those records or artefacts⁴, or those classes or descriptions of record or artefact, which in the opinion of the Committee are of sufficient interest to warrant preservation⁵; and

259 (2) to notify every body to which the Railway Heritage Act 1996 applies⁶ of the records or artefacts, or the classes or descriptions of record or artefact, so designated⁷.

1 As to the meaning of 'functions' see PARA 7 note 12 ante; definition applied by the Railway Heritage Act 1996 s 7(2).

2 Ibid s 3(1). As to the establishment of the Railway Heritage Committee see PARA 74 ante.

3 For these purposes, 'designated', in relation to a record or artefact, means designated, or of a class or description designated, by the committee under ibid s 3; and 'designation' is to be construed accordingly: s 7(1). As to the giving of notice to the committee of a proposed disposal of a designated record or artefact, and the committee's powers to give or withhold consent to that proposal, and where appropriate to give directions see s 4 (as amended) (see PARA 79 post) and s 5 (see PARA 80 post).

4 Subject to ibid s 3(4), references in s 3 to records or artefacts are references to records kept, or artefacts made, for purposes connected with railways: s 3(3). References in s 3 to records do not include references to records which are public records within the meaning of the Public Records Act 1958 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq): Railway Heritage Act 1996 s 3(4).

According to the Railway Heritage Committee procedures, the word 'artefact' is generally held to refer to three-dimensional items that may be moved around: see the HC Official Report, SC C (Railway Heritage Bill), 24 April 1996, col 7.

5 Railway Heritage Act 1996 s 3(1)(a). The function conferred by s 3(1)(a) (see head (1) in the text) includes power to revoke or amend designations previously made; and s 3(1)(b) (see head (2) in the text) is to be construed accordingly: s 3(2).

6 The following are to be regarded as bodies to which the Railway Heritage Act 1996 applies, namely:

55 (1) any publicly owned railway company (s 1(1)(d) (s 1(1) renumbered by the Railways Act 2005 s 59(1), Sch 12 para 13(1), (2)));;

56 (2) any company which was formerly a publicly owned railway company (Railway Heritage Act 1996 s 1(1)(e) (as so renumbered));

57 (3) the Secretary of State (s 1(1)(f) (substituted by the Transport Act 2000 s 215, Sch 16 para 55(1), (2); amended and renumbered by the Railways Act 2005 Sch 12 para 13(1), (2));

58 (4) any company which is wholly owned by the Secretary of State (Railway Heritage Act 1996 s 1(1)(g) (amended by the Transport Act 2000 Sch 16 para 55(1), (3); amended and renumbered by the Railways Act 2005 Sch 12 para 13(1), (2));

59 (5) any franchisee (Railway Heritage Act 1996 s 1(1)(h) (as so renumbered)); and

60 (6) any franchise operator (s 1(1)(i) (as so renumbered)).

Until a day to be appointed under the Transport Act 2000 s 275(1), the Railway Heritage Act 1996 applies also to any company which was formerly a wholly owned subsidiary of the British Railways Board: see s 1(1)(c) (as so renumbered; prospectively repealed by the Transport Act 2000 s 274, Sch 31 Pt IV). However, at the date at which this volume states the law, no such day had been appointed.

The Secretary of State may, by order made by statutory instrument, modify the Railway Heritage Act 1996 s 1(1) (as amended and renumbered) by adding a body or a description of body to the list of bodies to which the Railway Heritage Act 1996 applies (s 1(2) (s 1(2)-(4) added by Railways Act 2005 Sch 12 para 13(3))). Before making an order under the Railway Heritage Act 1996 s 1(2) (as added), the Secretary of State must consult the bodies that appear to him to be the ones that will become bodies to which the Railway Heritage Act 1996 applies on the coming into force of the order: s 1(3) (as so added). A statutory instrument containing an order under s 1(2) (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(4) (as so added). For the meaning of 'franchise operator' see PARA 130 note 4 post; definition applied by s 7(2). For the meaning of 'franchisee' see PARA 130 note 4 post; definition applied by s 7(2). For the meanings of 'publicly owned railway company', 'subsidiary' and 'wholly owned subsidiary' see PARA 7 note 4 ante; definitions applied by s 7(2). As to the Secretary of State see PARA 35 ante. As to the establishment and abolition of the British Railways Board see PARA 44 ante.

7 Ibid s 3(1)(b); and see note 5 supra.

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79. Notice of proposed disposal of record or artefact.

Where a body to which the Railway Heritage Act 1996 applies¹ proposes to dispose² of a designated record or artefact³ to any person to any extent, it must give notice to the Railway Heritage Committee⁴ containing details of the proposed disposal⁵. If the committee is content both with the person to whom the record or artefact is proposed to be disposed of and with the terms of the proposed disposal (including any terms relating to payment⁶), it is to consent to the disposal⁷. If the committee is content with that person but not with those terms, it is to give directions to the body with respect to the terms (including any terms relating to payment) on which the body may offer to dispose of the record or artefact to that person to the extent proposed⁸. If the committee is not content with that person, it may give directions to the body:

- 260 (1) specifying the person or persons to whom the body may offer to dispose of the record or artefact to the extent proposed and, where there are two or more such persons, specifying the order in which the offers must be made⁹; and
- 261 (2) with respect to the terms (including any terms relating to payment) on which the body must make the offer or offers¹⁰.

Nothing in the provisions relating to notice of a proposed disposal¹¹ applies to, and nothing in the provisions relating to the disposal of record or artefact¹² precludes, any disposal of a designated record or artefact by a body to which the Railway Heritage Act 1996 applies if: (a) at the time of the disposal, the body has not been notified of the designation¹³; (b) the disposal is made in accordance with a transfer scheme¹⁴; or (c) the disposal is not so made but is a disposal to another body to which the Railway Heritage Act 1996 applies¹⁵.

1 As to bodies to which the Railway Heritage Act 1996 applies see PARA 78 note 6 ante.

2 For these purposes, 'disposal', in relation to a designated record or artefact, includes: (1) a lease or loan of the record or artefact for a period which exceeds 12 months, or for any period to a person to whom the record or artefact has been leased or loaned at any time in the preceding 12 months; (2) the creation of any security over the record or artefact; and 'dispose' is construed accordingly: *ibid* s 7(1). For the meaning of 'designated' see PARA 78 note 3 ante. As to the meaning of 'artefact' see PARA 78 note 4 ante.

3 See note 2 *supra*. As to the designation (within the meaning of *ibid* s 7(1)) of records and artefacts see s 3(1); and PARA 78 ante. As to the disposal of a designated record or artefact see s 5; and PARA 80 post.

4 As to the establishment of the Railway Heritage Committee see PARA 74 ante.

5 Railway Heritage Act 1996 s 4(1).

6 In *ibid* s 4(2)-(4), 'terms relating to payment' includes terms as to the basis on which the amount or terms of payment are to be settled: s 4(5).

7 *Ibid* s 4(2).

8 *Ibid* s 4(3). See note 6 *supra*.

9 *Ibid* s 4(4)(a).

10 *Ibid* s 4(4)(b). See note 6 *supra*.

11 Ibid s 4 (as amended): see s 4(6).

12 Ibid s 5 (see PARA 80 post): see s 4(6).

13 Ibid s 4(6)(a).

14 Ibid s 4(6)(b) (amended by the Transport Act 2000 s 252, Sch 27 paras 51, 53; and by the Railways Act 2005 s 59(1), Sch 12 para 13(1), (5)). The text refers to a transfer scheme under the Transport Act 2000 or the Railways Act 2005 (see PARA 6 et seq ante): see the Railway Heritage Act 1996 s 4(6)(b) (as so amended).

15 Ibid s 4(6)(c). However, where such a body makes such a disposal as is mentioned in s 4(6)(c), it must, within the period of two months beginning with the day of the disposal, give notice to the committee of the disposal: s 4(6).

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80. Disposal of record or artefact.

A body to which the Railway Heritage Act 1996 applies¹ may dispose² of a designated record or artefact³ if, and only if:

- 262 (1) the Railway Heritage Committee⁴ has consented to the disposal⁵;
- 263 (2) the disposal is made in pursuance of an offer made by the body in accordance with directions⁶;
- 264 (3) the body has given notice of the disposal⁷ and has made one or more offers in accordance with directions⁸, but the offer has not been accepted, or (as the case may be) none of the offers has been accepted, within the requisite period⁹; or
- 265 (4) the body has given notice of the disposal¹⁰, but the committee has neither consented¹¹, nor given directions¹², within the requisite period¹³.

Any disposal made in contravention¹⁴ of heads (1) to (4) above is void¹⁵.

1 As to bodies to which the Railway Heritage Act 1996 applies see PARA 78 note 6 ante.

2 For the meaning of 'dispose' see PARA 79 note 2 ante.

3 For the meaning of 'designated' see PARA 78 note 3 ante. As to the designation (within the meaning of the Railway Heritage Act 1996 s 7(1)) of records and artefacts see s 3(1); and PARA 78 ante. As to the notification of a proposed disposal of a designated record or artefact see s 4 (as amended); and PARA 79 ante. As to the meaning of 'artefact' see PARA 78 note 4 ante.

4 As to the establishment of the Railway Heritage Committee see PARA 74 ante.

5 Railway Heritage Act 1996 s 5(1)(a). The disposal referred to is that under s 4(2) (see PARA 79 ante): see s 5(1)(a).

6 Ibid s 5(1)(b). The directions referred to are those directions given under s 4(3) or s 4(4) (see PARA 79 ante): see s 5(1)(b).

7 Ie under ibid s 4(1) (see PARA 79 ante): see s 5(1)(c).

8 Ie directions given under ibid s 4(3) or s 4(4) (see PARA 79 ante): see s 5(1)(c).

9 Ibid s 5(1)(c).

10 Ie under ibid s 4(1) (see PARA 79 ante): see s 5(1)(d).

11 Ie under ibid s 4(2) (see PARA 79 ante): see s 5(1)(d).

12 Ie directions under ibid s 4(3) or s 4(4) (see PARA 79 ante): see s 5(1)(d).

13 Ibid s 5(1)(d). For these purposes, 'requisite period', in relation to an offer or notice, means the period of six months beginning with the day on which the offer or notice was made or given: s 5(1).

Subject to the Public Records Act 1958 s 10, Sch 1 para 7 (as amended) (power to add further categories of records and to determine cases of doubt: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835) and any Orders in Council made under Sch 1 para 7 (as amended), nothing in Sch 1 (as amended) causes any records disposed of in accordance with the Railway Heritage Act 1996 s 5(1) to become, by reason of that or any subsequent disposal, public records within the meaning of the Public Records Act 1958: Railway Heritage Act 1996 s 5(3). As to records in the custody of the Secretary of State for Scotland see s 5(4).

14 As to the meaning of 'contravention', in relation to any condition or requirement, see PARA 29 note 13 ante; definition applied by *ibid* s 7(2).

15 *Ibid* s 5(2).

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81. Guidance and information.

The Railway Heritage Committee¹, in exercising its functions² under the Railway Heritage Act 1996, must have regard to such guidance as may from time to time be given by the Secretary of State³; and any such guidance may make different provision for different cases or descriptions of case⁴. The committee may require a body to which the Railway Heritage Act 1996 applies⁵ to furnish the committee with such information as the committee reasonably considers necessary to enable it to exercise any of its functions under the Railway Heritage Act 1996⁶.

1 As to the establishment of the Railway Heritage Committee see PARA 74 ante.

2 As to the meaning of 'functions' see PARA 7 note 12 ante; definition applied by the Railway Heritage Act 1996 s 7(2).

3 Ibid s 6(1). As to the Secretary of State see PARA 35 ante.

4 Ibid s 6(1).

5 As to bodies to which the Railway Heritage Act 1996 applies see PARA 78 note 6 ante.

6 Ibid s 6(2).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(i) In general/82. Meaning of 'railway services'.

(3) OPERATING THE RAILWAYS

(i) In general

82. Meaning of 'railway services'.

'Railway services' means¹ services of any of the following descriptions, that is to say:

- 266 (1) services for the carriage of passengers by railway²;
- 267 (2) services for the carriage of goods by railway³;
- 268 (3) light maintenance services⁴;
- 269 (4) station services⁵;
- 270 (5) network services⁶.

For these purposes⁷, 'network services' means any service which consists of, or is comprised in, the provision or operation of a network⁸ (or of any of the track or other installations comprised in a network), but does not include any service which falls within heads (1) to (4) above⁹.

Without prejudice to the generality of this definition¹⁰ 'network services' includes services of any of the following descriptions, that is to say:

- 271 (a) the construction, maintenance¹¹, re-alignment, re-configuration or renewal of track¹²;
- 272 (b) the installation, operation, maintenance or renewal of a railway signalling system or of any other railway communication equipment¹³;
- 273 (c) the construction, control, maintenance or renewal of electrical conductor rails or overhead lines, of any supports for such rails or lines, and of any electrical substations or power connections used or to be used in connection therewith, and the provision of electrical power by means thereof¹⁴;
- 274 (d) the provision and operation of services for the recovery or repair of locomotives or other rolling stock in connection with any accident, malfunction or mechanical or electrical failure¹⁵;
- 275 (e) the provision and operation of services for keeping track free from, or serviceable notwithstanding, obstruction (whether by snow, ice, water, fallen leaves or any other natural or artificial obstacle or hindrance) or for removing any such obstruction¹⁶;
- 276 (f) the provision, operation, maintenance and renewal of any plant, equipment or machinery used in carrying on any of the activities specified in heads (a) to (e) above¹⁷;
- 277 (g) the exercise of day to day control over train movements over or along any track comprised in the network¹⁸;
- 278 (h) the preparation of a timetable for the purposes of such control as is referred to in head (g) above¹⁹;

and it is immaterial for these purposes²⁰ whether or not the person who provides the service in question also provides or operates a network, or any of the track or other installations comprised in a network, or provides the service on behalf of a person who does so²¹.

1 le in the Railways Act 1993 Pt I (ss 4-83) (as amended): see ss 82(1), 83(1).

2 Ibid ss 82(1)(a), 83(1). For the purposes of Pt I (as amended), 'services for the carriage of passengers by railway' includes services for and in connection with the carriage of luggage, parcels or mail on trains which at the time are available, and primarily intended, for use by passengers (and references to carrying, or to the carriage of, passengers by railway are to be construed accordingly): s 82(2).

'Train' means either two or more items of rolling stock coupled together (at least one of which is a locomotive) or a locomotive not coupled to any other rolling stock; 'rolling stock' means any carriage, wagon or other vehicle used on track and includes a locomotive; 'locomotive' means any railway vehicle which has the capacity for self-propulsion (whether or not the power by which it operates is derived from a source external to the vehicle); 'railway vehicle' includes anything which, whether or not it is constructed or adapted to carry any person or load, is constructed or adapted to run on flanged wheels over or along track; and 'vehicle' includes railway vehicle: s 83(1).

'Railway' has its wider meaning in the application of s 82 in relation to any provision of Pt I (as amended) for the purposes of which 'railway' has that meaning: s 82(6). Accordingly, the definition of 'railway' in the Transport and Works Act 1992 s 67(1) (see PARA 302 note 4 post) has effect for the purposes of the Railways Act 1993 Pt I (as amended) as it has effect for the purposes of the Transport and Works Act 1992; and cognate expressions are to be construed accordingly: Railways Act 1993 ss 81(1), 83(1). This definition is subject to the proviso that, where it is stated for the purposes of any provision of Pt I (as amended) that railway has its wider meaning, 'railway' is to be taken, for the purposes of that provision, to mean: (1) a railway; (2) a tramway; or (3) a transport system which uses another mode of guided transport but which is not a trolley vehicle system; and cognate expressions are to be construed accordingly: see ss 81(2), 83(1). For the purposes of heads (1) to (3) supra, 'guided transport', 'railway', 'tramway' and 'trolley vehicle system' have the meaning given by the Transport and Works Act 1992 s 67(1) (see PARA 302 notes 4, 6, 7 post): Railways Act 1993 ss 81(3), 83(1). A business is regulated for the purposes of the Insolvency Act 1986 s 72D (as added) if it is carried on by the operator of a system of transport which is deemed to be a railway for a purpose of the Railways Act 1993 Pt I (as amended) by virtue of s 81(2) or by the operator of a vehicle carried on flanged wheels along such a system: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 385.

3 Railways Act 1993 ss 82(1)(b), 83(1). For the purposes of Pt I (as amended), a person is to be regarded as providing or operating services for the carriage of goods by railway notwithstanding that he provides or operates the services solely for the carriage of his own goods or otherwise for his own benefit: s 83(2). For these purposes, 'goods' includes mail, parcels, animals, plants and any other creature, substance or thing capable of being transported, but does not include passengers: s 83(1).

4 Ibid ss 82(1)(c), 83(1). For the purposes of Pt I (as amended), 'light maintenance services' means services of any of the following descriptions, that is to say: (1) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock (ss 82(2)(a), 83(1)); or (2) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service (ss 82(2)(b), 83(1)).

5 Ibid ss 82(1)(d), 83(1). For the purposes of Pt I (as amended), 'station services' means any service which consists of, or is comprised in, the provision or operation of a station: ss 82(2), 83(1). For the purposes of this definition of 'station services', where a person permits another to use any land or other property comprised in a station he is to be regarded as providing a service which falls within the meaning of 'station services': see s 82(2). In determining whether any service is a station service, it is immaterial whether or not the person who provides the service also provides or operates a station, or any part of a station, or provides the service on behalf of a person who does so: s 82(4). 'Station' means any land or other property which consists of premises used as, or for the purposes of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is, or the premises are, also used for other purposes: s 83(1).

6 Ibid ss 82(1)(e), 83(1).

7 le in ibid Pt I (as amended): see ss 82(2), 83(1).

8 For these purposes, 'network' means: (1) any railway line, or combination of two or more railway lines; and (2) any installations associated with any of the track comprised in that line or those lines, together constituting a system of track and other installations which is used for and in connection with the support, guidance and operation of trains: ibid s 83(1). 'Track' means any land or other property comprising the permanent way of any railway, taken together with the ballast, sleepers and metals laid thereon, whether or not the land or other property is also used for other purposes; and any reference to track includes a reference to: (a) any level crossings, bridges, viaducts, tunnels, culverts, retaining walls, or other structures used or to be used for the support of, or otherwise in connection with, track; and (b) any walls, fences or other structures bounding the railway or bounding any adjacent or adjoining property: s 83(1).

9 Ibid ss 82(2), 83(1). For the purposes of this definition of 'network services', where a person permits another to use any land or other property comprised in a network he is to be regarded as providing a service which falls within the meaning of 'network services': see s 82(2).

10 Ie the definition in ibid ss 82(2), 83(1) (see the text and notes 7-10 supra): see s 82(3).

11 In ibid s 82, 'maintenance' includes the detection and rectification of any faults: s 82(5).

12 Ibid ss 82(3)(a), 83(1).

13 Ibid ss 82(3)(b), 83(1).

14 Ibid ss 82(3)(c), 83(1).

15 Ibid ss 82(3)(d), 83(1).

16 Ibid ss 82(3)(e), 83(1).

17 Ibid ss 82(3)(f), 83(1).

18 Ibid ss 82(3)(g), 83(1).

19 Ibid ss 82(3)(h), 83(1).

20 Ie for the purposes of ibid ss 82(2), (3), 83(1): see s 82(3).

21 Ibid ss 82(3), 83(1).

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(ii) Railway Licences

A. LICENSING REGIME UNDER THE RAILWAYS ACT 1993

(A) LICENCES GRANTED UNDER THE

83. Licences authorising persons to be operators of railway assets.

The Secretary of State¹ (after consultation with the Office of Rail Regulation)² or the Office of Rail Regulation (with the consent³ of or in accordance with a general authority given by the Secretary of State)⁴ may⁵ grant to any person a licence⁶ authorising the person to be the operator⁷ of such railway assets (or of railway assets of such a class or description⁸) as may be specified in the licence⁹.

An application for a licence:

- 279 (1) must be made in the prescribed¹⁰ manner¹¹;
- 280 (2) must be accompanied by such fee (if any) as may be prescribed in the case of a licence of the description in question¹²; and
- 281 (3) must, if the Secretary of State so requires, be published by the applicant in the prescribed manner and within such period as may be notified to the applicant by the Secretary of State¹³;

and, on any such application, the Secretary of State or, as the case may be, the Office of Rail Regulation may either grant or refuse the licence¹⁴.

Before granting a licence, the Secretary of State or the Office of Rail Regulation must give notice¹⁵: (a) stating that he or it proposes to grant the licence¹⁶; (b) stating the reasons why he or it proposes to grant the licence¹⁷; and (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made¹⁸, and must consider any representations or objections which are duly made and not withdrawn¹⁹.

A licence must be in writing and, unless previously revoked or surrendered in accordance with any terms contained in the licence, continues in force for such period as may be specified in or determined by or under the licence²⁰. A licence is not capable of being surrendered without the consent of the Office of Rail Regulation if it is²¹: (i) a passenger licence²²; (ii) a network licence²³; (iii) a station licence²⁴; or (iv) a light maintenance depot licence²⁵.

As soon as practicable after the granting of a licence, the grantor must send a copy: (A) in the case of a licence granted by the Secretary of State, to the Office of Rail Regulation²⁶; or (B) in the case of a licence granted by the Office of Rail Regulation, to the Secretary of State²⁷.

Any sums received by the Secretary of State or the Office of Rail Regulation under the provisions relating to licence applications²⁸ are to be paid into the Consolidated Fund²⁹.

1 As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

2 Ibid s 8(1)(a) (amended by the Transport Act 2000 s 216, Sch 17 Pt I paras 1, 4(1), (2)(a); the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 ss 1(1), 59(6), Sch 1 Pt 1 para 3(1)(a), Sch 13 Pt 1). As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), which are set out in s 4 (as amended): see PARA 33 ante.

3 Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

4 Ibid s 8(1)(b) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 4(1), (2)(b); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 3(1)(b), Sch 13 Pt 1). Any general authority given to the Office of Rail Regulation under the Railways Act 1993 s 8(1)(b) (as amended) may include a requirement for the Office of Rail Regulation either to consult the Secretary of State, or a requirement to obtain his approval before granting a licence: s 8(2) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 4(1), (3); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 3(2), Sch 13 Pt 1). As to the general authority given to the Office of Rail Regulation see further note 9 infra.

5 le subject to the Railways Act 1993 s 8(2)-(11) (as amended) (see the text and notes 10-29 infra): see s 8(1).

6 For these purposes, 'licence' means a licence under ibid s 8 (as amended); and 'licence holder' is to be construed accordingly: s 83(1).

7 For these purposes, 'operator', in relation to any railway asset, means the person having the management of that railway asset for the time being; and 'railway asset' means: (1) any train being used on a network, whether for the purpose of carrying passengers or goods by railway or for any other purpose whatsoever; (2) any network; (3) any station; or (4) any light maintenance depot: ibid ss 6(2), 83(1). 'Light maintenance depot' means any land or other property which is normally used for or in connection with the provision of light maintenance services, whether or not it is also used for other purposes: s 83(1). For the meaning of 'light maintenance services' see PARA 82 note 4 ante; for the meaning of 'network' see PARA 82 note 8 ante; for the meaning of 'station' see PARA 82 note 5 ante; and for the meaning of 'train' see PARA 82 note 2 ante. As to the meaning of 'services for the carriage of goods by railway' see PARA 82 note 3 ante; and as to the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 ante.

8 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

9 Ibid s 8(1). The Secretary of State has issued to the Office of Rail Regulation a 'general authority' which sets out a number of limitations on the power of the Office of Rail Regulation to grant licences to certain classes of persons or generally on the terms that can be granted: see the 'General Authority to the Office of Rail Regulation' (issued by the Secretary of State to the Office of Rail Regulation) (July 1994), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

There are five different standard licences; one for each category of railway asset, namely: (1) network licences; (2) passenger (train operator's) licences; (3) non-passenger train operator's licences; (4) station licences; and (5) light maintenance depot licences. For these purposes, 'light maintenance depot licence' means a licence authorising a person: (a) to be the operator of a light maintenance depot; and (b) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, the provision of light maintenance services: s 83(1). 'Network licence' means a licence authorising a person: (i) to be the operator of a network; (ii) to be the operator of a train being used on a network for any purpose comprised in the operation of that network; and (iii) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in head (ii) supra: s 83(1). 'Passenger licence' means a licence authorising a person: (A) to be the operator of a train being used on a network for the purpose of carrying passengers by railway; and (B) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in head (A) supra: s 83(1). 'Station licence' means a licence authorising a person to be the operator of a station: s 83(1). As to licences see further PARA 84 et seq post; and as to the offence of acting as the operator of a railway asset without a licence under the Railways Act 1993 s 8 (as amended) or an exemption under s 7 (as amended) (see PARA 92 post) see PARA 367 post. As to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. As to the duty of the Rail Passengers' Council to investigate any matter which relates to the provision of station services by any person in a case where the operator of the station in question is authorised by a licence to be the operator of that station see PARA 72 ante. As to the liability of a person who

holds a licence under Pt I (as amended) to make good damage to crops caused by their engines see the Railway Fires Act 1905; and PARA 301 post.

As to licences issued under provisions which implement Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (as amended) see PARA 93 et seq post. European licences (which are provided for under the implementing Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050) cover specified passenger and freight train operations only and even if a European licence is held (or is granted) a Railways Act 1993 licence is required for any station, light maintenance depot, network or maintenance train operation running on the rail network in Great Britain: see PARA 31 note 4 ante.

10 'Prescribed' means prescribed by regulations made by the Secretary of State: Railways Act 1993 s 83(1). Any power to make regulations by virtue of s 8(3) (as amended) is only exercisable by the Secretary of State after consultation with the Office of Rail Regulation: s 8(8) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 3(5), Sch 13 Pt 1). As to the making of regulations under the Railways Act 1993 generally see PARA 35 note 12 ante. As to the regulations made under s 8 (as amended) see the Railways (Licence Application) Regulations 1994, SI 1994/572; and notes 11-13 infra.

11 Railways Act 1993 s 8(3)(a).

Accordingly, every application must:

- 61 (1) be in writing (Railways (Licence Application) Regulations 1994, SI 1994/572, reg 3(1)(a));
- 62 (2) specify in full the name of the applicant and his address (being, in the case of a company, the address of its registered or principal office) (reg 3(1)(b));
- 63 (3) specify the railway assets, or class or description of railways assets, of which the applicant wishes to be authorised to be the operator (reg 3(1)(c));
- 64 (4) describe the activities which the applicant wishes to carry out pursuant to the licence (reg 3(1)(d));
- 65 (5) specify every licence held, and every licence applied for, by the applicant (reg 3(1)(e));
- 66 (6) be signed by or on behalf of the applicant (reg 3(1)(f)).

Every application must specify any bankruptcy order (as defined in the Insolvency Act 1986 s 381(1): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 84), which has at any time been made against the applicant, or, where the applicant is a company, against the directors for the time being of that company: Railways (Licence Application) Regulations 1994, SI 1994/572, reg 3(2). Every application made by a company must specify: (a) the amount of any issued share capital of that company and the full name and address of every person owning more than 3% of that issued share capital (reg 3(3)(a)); and (b) the full name and address of every director of that company (reg 3(3)(b)); and, where any such person or any such director is a company, the address must be that of the registered or principal office of that company (reg 3(3)). As to the lodgement of applications see reg 4; and as to the documents that must accompany applications see reg 6.

See also '*Railway Licensing: Guidance for Applicants*' (March 2006), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

12 Railways Act 1993 s 8(3)(b). Different fees may be prescribed under s 8(3) (as amended) in respect of licences authorising a person to be the operator of railway assets of different classes or descriptions: s 8(9).

At the date at which this volume states the law, the fee to accompany an application is £250: see the Railways (Licence Application) Regulations 1994, SI 1994/572, reg 5.

13 Railways Act 1993 s 8(3)(c).

If the Secretary of State requires that an application be published by the applicant pursuant to s 8(3)(c), the manner of publication must be in accordance with the following requirements (see the Railways (Licence Application) Regulations 1994, SI 1994/572, reg 7(1)), namely that there must be published at least once in the London Gazette, the Edinburgh Gazette and in one or more newspapers whose circulation (together) covers the whole of Great Britain a notice containing the following particulars (reg 7(2)):

- 67 (1) a statement that the applicant has made an application for a licence under the Railways Act 1993 (see the Railways (Licence Application) Regulations 1994, SI 1994/572, regs 2(1), 7(2)(a));
- 68 (2) the information referred to in reg 3(1)(b) (see note 11 head (2) supra) and in reg 3(1)(e) (see note 11 head (5) supra), and a summary of the information referred to in regulation 3(1)(c)

(see note 11 head (3) supra) and in reg 3(1)(d) (see note 11 head (4) supra), contained in the application (reg 7(2)(b));

- 69 (3) a statement that the application has been sent to the Office of Rail Regulation and the address of the principal office of the Office of Rail Regulation (Interpretation Act 1978 s 17(2)(b); Railways (Licence Application) Regulations 1994, SI 1994/572, reg 7(2)(c)).

14 Railways Act 1993 s 8(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

15 Railways Act 1993 s 8(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). A notice under the Railways Act 1993 s 8(4) (as amended) must be given by publishing the notice in such manner as the Secretary of State or the Office of Rail Regulation considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence: s 8(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). For the meaning of 'notice' see PARA 34 note 4 ante.

16 Railways Act 1993 s 8(4)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 5).

17 Railways Act 1993 s 8(4)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 5).

18 Railways Act 1993 s 8(4)(c).

19 Ibid s 8(4).

20 Ibid s 8(6).

A business is regulated for the purposes of the Insolvency Act 1986 s 72D (as added) if it is carried on in reliance on a licence under the Railways Act 1993 s 8 (as amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 385.

21 Ibid s 8(6) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 4(1), (4); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 3(3)). By virtue of the Railways Act 1993 s 8(6)(a)-(d) (see heads (i) to (iv) in the text) non-passenger train operator's licences cannot be surrendered without the consent of the Office of Rail Regulation: see s 8(6) (as so amended).

22 Ibid s 8(6)(a).

23 Ibid s 8(6)(b).

24 Ibid s 8(6)(c).

25 Ibid s 8(6)(d).

26 Ibid s 8(7)(a) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 4(1), (5)(a); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 3(4)(a), Sch 13 Pt 1).

27 Railways Act 1993 s 8(7)(b) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 4(1), (5)(b); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 3(4)(b), Sch 13 Pt 1).

28 Ie under the Railways Act 1993 s 8 (as amended): see s 8(11) (as amended).

29 Ibid s 8(11) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

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84. Conditions of licences.

A licence¹ may include:

- 282 (1) such conditions (whether or not relating to the licence holder's² being the operator of railway assets under the authorisation of the licence)³ as appear to the grantor to be requisite or expedient having regard to the duties imposed by the provision relating to the general duties of the Secretary of State and of the Office of Rail Regulation⁴; and
- 283 (2) conditions requiring the rendering to:
9
 - 24. (a) the Secretary of State⁵;
 - 25. (b) the Office of Rail Regulation⁶; or
 - 26. (c) any other person or any other person of a class or description⁷ specified in the licence, except a minister of the Crown or government department⁸,
- 10 284 of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence⁹.

Conditions included in a licence by virtue of head (1) above¹⁰:

- 285 (i) may require the licence holder to enter into any agreement with any person for such purposes as may be specified in the conditions¹¹;
- 286 (ii) may include provision for determining the terms on which such agreements are to be entered into¹²;
- 287 (iii) may require the licence holder:
11
 - 27. (A) to comply with any requirements from time to time imposed by a qualified person¹³ with respect to such matters as are specified in the licence or are of a description so specified¹⁴;
 - 28. (B) except in so far as a qualified person consents¹⁵ to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified¹⁶;
 - 29. (C) to refer for determination by a qualified person such questions arising under the licence as are specified in the licence or are of a description so specified¹⁷;
 - 30. (D) to refer for approval by a qualified person such things falling to be done under the licence as are specified in the licence or are of a description so specified¹⁸;
 - 31. (E) to furnish to a qualified person such documents¹⁹ or other information²⁰ as he may require for the purpose of exercising any functions²¹ conferred or imposed on him under or by virtue of the licence²²; and
 - 32. (F) to furnish to the Secretary of State or to the Office of Rail Regulation such documents or other information as he or it may require for the purpose of exercising the functions assigned or transferred to him or to it²³;

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288 (iv) may include provision about any matter which is dealt with (whether in the same or a different manner) by an access agreement²⁴.

Conditions included in a licence may contain provision for the conditions to cease to have effect or to be modified²⁵ at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions²⁶.

The conditions that may be included in a passenger licence²⁷ include conditions in respect of arrangements for the provision of staff concessionary travel²⁸.

1 le a licence authorising a person to be an operator of railway assets. For the meaning of 'licence' see PARA 83 note 6 ante; and for the meanings of 'operator' and 'railway asset' see PARA 83 note 7 ante. As to applications under the Railways Act 1993 for licences authorising persons to be operators of railway assets see PARA 83 ante.

2 For the meaning of 'licence holder' see PARA 83 note 6 ante.

3 The Railways Act 1993 s 9 (as amended) is subject to the provisions of s 10 (as amended) (condition of licences in relation to activities carried on by virtue of a licence exemption: see PARA 85 post): s 10(5).

4 Ibid s 9(1)(a). See note 3 supra. The text refers to the general duties of the Secretary of State and of the Office of Rail Regulation imposed by s 4 (as amended) (being the objectives at which he or it must aim when exercising, or deciding not to exercise, his or its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante): see s 9(1)(a). As to the Secretary of State see PARA 35 ante; and as to the Office of Rail Regulation see PARA 49 et seq ante. As to the duty of the Office of Rail Regulation to investigate any alleged or apprehended contravention of a condition of a licence see PARA 54 ante; and as to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. As to the making of orders securing compliance with conditions or requirements where such conditions or requirements are being contravened, or are likely to be contravened, by a licence holder see PARA 179 et seq post.

Licences would be granted normally including conditions dealing with any or all of the following matters: insurance against third party liability; claims allocation and handling; through tickets and network benefits; timetabling; provision of services for disabled people; complaints procedure; liaison with representative groups; membership of the Rail Safety and Standards Board (RSSB); Railway Group Standards; environmental matters; payment of fees; change of control; non-discrimination; emergency access; and changes to the schedule: see the model licences, which, at the date at which this volume states the law, are available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). As to the conditions that may be included in a passenger licence also see the text and notes 27-28 infra. The main network licence contains conditions in relation to the following matters (see the network licence granted to Network Rail Infrastructure Limited (formerly Railtrack PLC) (as modified at 12 April 2007), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>)): insurance against third party liability (condition 1); claims allocation and handling (condition 2); Rail Passengers' Council and London Transport Users' Committee (condition 5); safety and standards (condition 6); stewardship of the licence holder's network (condition 7); environmental matters (condition 8); timetabling (condition 9); non-discrimination (condition 10); prohibition of cross-subsidy (condition 11); ring-fencing and accounting records (condition 12); restriction on interests in train operating and rolling stock companies (condition 13); co-operation with the Mayor of London and Transport for London (condition 14); provision of information to the Office of Rail Regulation (condition 15); payment of fees (condition 17); restriction on use of certain information (condition 18); change of control (condition 19); systems code (condition 20); regulatory accounts (condition 22); appointment and role of regulatory reporters to assess the company's progress and competences in areas of network operation specified by the regulator (condition 23); register of the capacity, condition and capability of assets (condition 24); dealings with dependent users (condition 25); disposal of land (condition 26); corporate governance (condition 27); management incentive plan (condition 28); and level of financial indebtedness (condition 29).

For train operators required to hold European licences granted by the Office of Rail Regulation (or by other European regulators) the conditions set out in a Statement of National Regulatory Provisions (SNRP) are equivalent to the conditions attached to licences granted under the Railways Act 1993 regime: see PARA 98 et seq post.

5 Railways Act 1993 s 9(1)(b)(i). See note 3 supra.

6 Ibid s 9(1)(b)(ii) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). See note 3 supra.

7 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

8 Ibid s 9(1)(b)(iii). See note 3 supra.

9 Ibid s 9(1)(b). Any sums received by the Secretary of State or the Office of Rail Regulation in consequence of the provisions of any condition of a licence are to be paid into the Consolidated Fund: s 9(7) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). See note 3 supra. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

10 Railways Act 1993 s 9(2). The provisions of s 9(2)-(4) (as amended) (see the text and notes 11-26 infra) are without prejudice to the generality of s 9(1)(a): s 9(5). See note 3 supra.

11 Ibid s 9(2)(a). See notes 3, 10 supra.

12 Railways Act 1993 s 9(2)(b). See notes 3, 10 supra.

13 Any reference in ibid s 9(3) (as amended) to a 'qualified person' is a reference to: (1) a person specified in the licence in question for the purpose in question (s 9(6)(a)); or (2) a person of a description so specified (s 9(6)(b)), and includes a reference to a person nominated for that purpose by such a person pursuant to the licence (s 9(6)). See note 3 supra.

14 Ibid s 9(3)(a). See notes 3, 10 supra.

15 Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

16 Ibid s 9(3)(b). See notes 3, 10 supra.

17 Ibid s 9(3)(c). See notes 3, 10 supra.

18 Ibid s 9(3)(d). See notes 3, 10 supra.

19 As to the service of documents required under the Railways Act 1993 see PARA 34 note 13 ante.

20 As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see s 146 (cited in PARA 416 post).

21 As to the meaning of 'functions' see PARA 7 note 12 ante.

22 Railways Act 1993 s 9(3)(e). See notes 3, 10 supra.

23 Ibid s 9(3)(f) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), 6; and the Railways Act 2005 s 54(4), Sch 11 paras 1, 2). The text refers to the functions assigned or transferred to the Secretary of State or to the Office of Rail Regulation under or by virtue of the Railways Act 1993 Pt I (as amended) (the provision of railway services: see PARA 33 et seq ante) or the Railways Act 2005 Pt 4 (ss 22-45) (network modifications etc: see PARA 145 et seq post): see the Railways Act 1993 s 9(3)(f) (as so amended). See notes 3, 10 supra.

24 Ibid s 9(3A) (added by the Transport Act 2000 s 252, Sch 27 paras 17, 19). See notes 3, 10 supra. For the meaning of 'access agreement' see PARA 105 note 2 post.

25 As to the meaning of 'modification' see PARA 33 note 46 ante. As to modification of licences see PARA 87 et seq post.

26 Railways Act 1993 s 9(4). Any provision included by virtue of s 9(4) in a licence has effect in addition to the provision made by Pt I (as amended) (the provision of railway services: see PARA 33 et seq ante) with respect to the modification of the conditions of a licence: see s 9(4). See notes 3, 10 supra.

27 For the meaning of 'passenger licence' see PARA 83 note 9 ante; definition applied by ibid s 135(14).

28 Ibid s 135(1). The provisions of s 135 (as amended) (see further PARA 137 post) are without prejudice to the generality of the conditions which may be included in licences, whether or not with respect to free or concessionary travel: see s 135(9). As to the power of the Secretary of State to promote the provision of staff concessionary travel (which applies equally to licences and to franchise agreements) see s 135(2)-(4), (6)-(8), (12)-(14) (as amended); and PARA 137 post. For the meaning of references to staff concessionary travel see PARA 137 note 2 post.

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85. Conditions of licence referring to licence exempt activity.

A condition¹ which relates to both:

- 289 (1) a licensed activity² carried on by a person ('the licensee')³; and
- 290 (2) a licence exempt activity⁴ carried on by him⁵,

may be included in a licence, but only if and to the extent that, in the opinion of the person granting the licence, the condition must, in consequence of the licensee's carrying on of a mixed activity⁶, necessarily have effect in relation to the whole, or some part, of so much of the mixed activity as consists of the licence exempt activity if the condition is to have full effect in relation to so much of the mixed activity as consists of the licensed activity⁷. If and so long as a person is a licence exempt operator⁸:

- 291 (a) there may not be included in any licence granted to him any condition which relates to his licence exempt activities, except to the extent so permitted⁹; and
- 292 (b) any such condition which is included in a licence which has been granted to him is (except to that extent) of no effect so far as so relating¹⁰.

There may not be included in a licence any condition relating to the fares that may be charged in respect of train journeys¹¹ involving licence exempt travel¹², other than train journeys which also involve: (i) licensed travel¹³; and (ii) at least two consecutive scheduled calls¹⁴ at stations during any one continuous spell of licensed operation¹⁵.

1 le a condition of a licence authorising a person to be an operator of railway assets. For the meaning of 'licence' see PARA 83 note 6 ante; and for the meanings of 'operator' and 'railway asset' see PARA 83 note 7 ante. As to applications under the Railways Act 1993 for licences authorising persons to be operators of railway assets see PARA 83 ante. As to the duty of the Office of Rail Regulation to investigate any alleged or apprehended contravention of a condition of a licence see PARA 54 ante; and as to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. As to the conditions that may be included in a passenger licence see PARA 135 et seq post; and as to the making of orders securing compliance with conditions or requirements where such conditions or requirements are being contravened, or are likely to be contravened, by a licence holder see PARA 179 et seq post.

2 For these purposes, 'licensed activity' means any activity which a person carries on in his capacity as a licence holder: Railways Act 1993 s 10(6). For the meaning of 'licence holder' see PARA 83 note 6 ante.

3 Ibid s 10(2)(a).

4 For these purposes, 'licence exempt activity' means any activity which a person carries on in his capacity as a licence exempt operator: and 'licence exempt operator' means an operator of railway assets, or railway assets of a class or description who is, by virtue of a licence exemption, exempt from the requirement to be authorised by licence to be the operator of those railway assets or of railway assets of that class or description: ibid s 10(6). For the meaning of 'licence exemption' see PARA 92 note 9 post. For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

5 Ibid s 10(2)(b).

6 For these purposes, 'mixed activity' means any activity which is carried on by a person who is both a licence holder and a licence exempt operator and which is carried on by him in part as a licensed activity and in part as a licence exempt activity: *ibid* s 10(6).

7 *Ibid* s 10(2).

8 *Ibid* s 10(1).

9 *Ibid* s 10(1)(a). The text refers to the extent permitted by virtue of s 10(2) (see the text and notes 1-7 *supra*): see s 10(1)(a).

10 *Ibid* s 10(1)(b).

11 For the purposes of *ibid* s 10(3), (4), 'train journey' means a journey between any two stations which is scheduled to be made by means of one train (irrespective of where the train in question begins or ends its journey): s 10(4). For the meaning of 'station' see *PARA 82* note 5 *ante*; and for the meaning of 'train' see *PARA 82* note 2 *ante*.

12 The provisions of *ibid* s 10(3) have effect notwithstanding anything in s 10(1) (see the text and notes 8-10 *supra*) or s 10(2) (see the text and notes 1-7 *supra*): s 10(5). Section 9 (as amended) (see *PARA 84 ante*) is also subject to the provisions of s 10 (as amended): see s 10(5). For the purposes of s 10(3), (4), 'licence exempt travel' means travel by means of a train whose operator is, by virtue of a licence exemption, exempt from the requirement to be authorised by licence to be the operator of that train for the whole, or for some part, of the train journey in question: s 10(4).

13 *Ibid* s 10(3)(a). See note 12 *supra*. For the purposes of s 10(3), (4), 'licensed travel' means travel by means of a train whose operator is authorised by licence to be the operator of that train for some part of the train journey in question: s 10(4).

14 For these purposes, 'scheduled call', in relation to a service or journey, means a scheduled stop at a station for the purpose of allowing passengers to join or leave the service or train (including the stops where the service or journey starts and ends): *ibid* s 83(1) (definition added by the Railways Act 2005 s 1(1), Sch 1 Pt 2 para 37(1), (3)).

15 Railways Act 1993 s 10(3)(b). See note 12 *supra*. For the purposes of s 10(3), (4), 'spell of licensed operation', in the case of any train journey, means any part of the journey throughout which the operator of the train in question lawfully acts as such by virtue only of holding one or more licences: s 10(4).

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86. Assignment of licences.

A licence¹ is capable of being assigned², but only if it includes a condition authorising assignment³, and only with the consent⁴ of:

- 293 (1) the Secretary of State⁵, if he is specified for the purpose in the licence⁶; or
- 294 (2) the Office of Rail Regulation⁷, in any other case⁸.

Any such consent may be given subject to compliance with such conditions as the person giving the consent thinks fit to impose, which may include conditions modifying⁹ (or requiring or otherwise providing for the making of modifications to) the conditions of the licence¹⁰. A licence may include conditions which must be complied with before the licence can be assigned¹¹.

An assignment (or purported assignment) of a licence is void: (a) if the licence is not capable of assignment¹²; (b) if the assignment (or purported assignment) is in breach of a condition of the licence¹³; or (c) if there has, before the assignment or purported assignment, been a contravention¹⁴ of a condition subject to compliance with which the required consent¹⁵ is given¹⁶.

1 le a licence authorising a person to be an operator of railway assets. For the meaning of 'licence' see PARA 83 note 6 ante; and for the meanings of 'operator' and 'railway asset' see PARA 83 note 7 ante. As to applications under the Railways Act 1993 for licences authorising persons to be operators of railway assets see PARA 83 ante.

2 For these purposes, 'assignment' includes any form of transfer; and cognate expressions are to be construed accordingly: Railways Act 1993 s 11(8). A licence is not capable of being assigned under or by virtue of any provision of the Railways Act 1993 other than s 11 (as amended) and s 59, Sch 7 para 4 (as amended) (transfer of licences under scheme made in connection with a railway administration order: see PARA 187 post): s 11(7).

3 Ibid s 11(1).

4 Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

5 As to the Secretary of State see PARA 35 ante. The Secretary of State has general duties imposed on him by ibid s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (ss 4-83) (as amended): see PARA 33 ante.

6 Ibid s 11(2)(a) (s 11(2)(a), (b) substituted by the Transport Act 2000 s 216, Sch 17 Pt I paras 1, 5(1), (2)).

7 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (as amended): see PARA 33 ante.

8 Ibid s 11(2)(b) (as substituted (see note 6 supra); amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 ss 1(1), 59(6), Sch 1 Pt 1 para 4(a), Sch 13 Pt 1).

9 As to the meaning of 'modification' see PARA 33 note 46 ante.

10 Railways Act 1993 s 11(4) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 5(1), (4); and the Railways Act 2005 Sch 1 Pt 1 para 4(b), Sch 13 Pt 1). As to the modification of licences generally see PARA 87 et seq post.

11 Railways Act 1993 s 11(5).

12 Ibid s 11(6)(a).

13 Ibid s 11(6)(b).

14 As to the meaning of 'contravention' in relation to any condition see PARA 29 note 13 ante.

15 As to the consent required by the Railways Act 1993 s 11(2) (as amended) (see the text and notes 4-8 supra): see s 11(6)(c).

16 Ibid s 11(6)(c).

As to the duty of the Office of Rail Regulation to investigate any alleged or apprehended contravention of a condition of a licence see PARA 54 ante; and as to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. As to the making of orders securing compliance with conditions or requirements where such conditions or requirements are being contravened, or are likely to be contravened, by a licence holder see PARA 179 et seq post.

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(B) MODIFICATION OF LICENCES GRANTED UNDER THE

(a) Modification by Agreement

87. Modification of licences by agreement.

The Office of Rail Regulation¹ may² modify³ the conditions of a licence⁴ if the holder of the licence consents⁵ to the modifications⁶. Before making such modifications, the Office of Rail Regulation must give notice⁷:

- 295 (1) stating that it proposes to make the modifications and setting out their effect⁸;
- 296 (2) stating the reasons why it proposes to make the modifications⁹; and
- 297 (3) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made¹⁰,

and that Office must, before making the modifications, consider any representations or objections which are duly made and not withdrawn¹¹. Such a notice must be given¹²: (a) by publishing the notice in such manner as the Office of Rail Regulation considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications¹³; and (b) by serving a copy of the notice on the holder of the licence¹⁴.

1 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante.

2 Ie subject to the provisions of *ibid* s 12(2), (3) (as amended) (see the text and notes 7-14 *infra*): see s 12(1).

3 As to the meaning of 'modification' see PARA 33 note 46 ante.

4 Ie a licence authorising a person to be an operator of railway assets. As to applications under the Railways Act 1993 for licences authorising persons to be operators of railway assets see PARA 83 ante; as to conditions of licences see PARAS 84, 85 ante; and as to modifications of licences under the Railways Act 1993 and other enactments see PARA 88 et seq post. For the meaning of 'licence' see PARA 83 note 6 ante; and for the meanings of 'operator' and 'railway asset' see PARA 83 note 7 ante.

5 Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

6 *Ibid* s 12(1) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). If the holder of the licence does not consent to the modifications referred to in the text, the disagreement may be resolved by the Office of Rail Regulation making a reference to the Competition Commission regarding those modifications: see PARA 88 et seq post.

As to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. Modifications agreed between the Office of Rail Regulation and licensed operators are recorded in the annual report which is required under the Railways Act 1993 s 74 (as amended) (as to which see PARA 57 ante).

7 Ibid s 12(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 5(2)). For the meaning of 'notice' see PARA 34 note 4 ante.

8 Railways Act 1993 s 12(2)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

9 Railways Act 1993 s 12(2)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

10 Railways Act 1993 s 12(2)(c).

11 Ibid s 12(2) (amended by the Transport Act 2000 s 215, Sch 17 Pt I paras 1, 6(1), (3)(b)).

12 Railways Act 1993 s 12(3) (amended by the Railways Act 2005 Sch 13 Pt 1).

13 Railways Act 1993 s 12(3)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 13 Pt 1).

14 Railways Act 1993 s 12(3)(b). As to service of documents under the Railways Act 1993 see PARA 34 note 13 ante.

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(b) Compulsory Modification following Reference to Competition Commission

88. References to the Competition Commission regarding modification of licences.

The Office of Rail Regulation¹ may make to the Competition Commission² a reference³ which is so framed as to require the Commission to investigate and report on the following questions⁴:

- 298 (1) whether any matters which:
13
- 33. (a) relate to the provision of any railway services⁵ by means of a railway asset⁶ (or railway assets of a class or description⁷) whose operator⁸ acts as such by virtue of a licence⁹; and
- 34. (b) are specified in the reference¹⁰,
14
- 299 operate (or may be expected to operate) against the public interest¹¹; and
- 300 (2) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications¹² of the conditions of the licence¹³.

The Office of Rail Regulation may specify in such a reference (or a variation of such a reference) for the purpose of assisting the Competition Commission in carrying out the investigation on the reference¹⁴:

- 301 (i) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have¹⁵; and
- 302 (ii) any modifications of the conditions of the licence by which, in its opinion, those effects could be remedied or prevented¹⁶.

It is the duty of the Office of Rail Regulation, for the purpose of assisting the Competition Commission in carrying out an investigation on such a reference, to give to the Commission¹⁷: (A) any information¹⁸ in the possession of that Office which relates to matters falling within the scope of the investigation and either is requested by the Commission for that purpose or is information which, in the opinion of that Office, it would be appropriate for that purpose to give to the Commission without any such request¹⁹; and (B) any other assistance which the Commission may require, and which it is within the power of the Office of Rail Regulation to give, in relation to any such matters²⁰. The Commission, for the purpose of carrying out any such investigation, must take account of any information thus given to it for that purpose²¹.

Every such reference must specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made²².

1 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to

the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante.

As to things done under or for the purposes of any provision of the Railways Act 1993 ss 13-15C (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1(1), Sch 1 para 10(1), (2). As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARA 9 et seq.

3 Certain provisions of the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended) (see COMPETITION vol 18 (2009) PARA 173 et seq) apply, with modifications, for the purposes of references under the Railways Act 1993 s 13 (as amended) as they apply for the purposes of references under the Enterprise Act 2002 Pt 3 (as amended): see the Railways Act 1993 s 13B (ss 13A, 13B added by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (4); the Railways Act 1993 s 13B amended by the Communications Act 2003 s 389(1), Sch 16 para 4(1), (2)).

As to the application of the Railways Act 1993 ss 13-13B (as amended), with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(b), Pt 2 para 3; and PARA 98 note 5 post.

4 Railways Act 1993 s 13(1) (amended by the Railways Act 2005 Sch 1 Pt 1 para 6(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(a)).

The Office of Rail Regulation may, at any time, by notice given to the Competition Commission vary a reference under the Railways Act 1993 s 13 (as amended) by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission must give effect to the variation: s 13(2) (amended by the Railways Act 2005 Sch 1 Pt 1 para 6(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)). For the meaning of 'notice' see PARA 34 note 4 ante.

The general restrictions on the disclosure of information obtained under or by virtue of the provisions of the Railways Act 1993 are not to be seen as limiting the matters which may be included in, or made public as part of, a report of the Competition Commission under any provision of Pt I (as amended): see s 145(5) (as amended); and PARA 419 post.

5 For the meaning of 'railway services' see PARA 82 ante.

6 For the meaning of 'railway asset' see PARA 83 note 7 ante.

7 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

8 For the meanings of 'operator' see PARA 83 note 7 ante.

9 Railways Act 1993 s 13(1)(a)(i). For the meaning of 'licence' see PARA 83 note 6 ante. However, nothing in s 13 (as amended) applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence: s 13(9).

10 Ibid s 13(1)(a)(ii).

11 Ibid s 13(1)(a). In determining for the purposes of s 13 (as amended) whether any particular matter operates, or may be expected to operate, against the public interest, the Competition Commission must have regard to the matters as respects which general duties are imposed on the Office of Rail Regulation by s 4 (as amended) (see note 1 supra): s 13(7) (amended by the Transport Act 2000 s 274, Sch 31 Pt IV; the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)).

12 As to the meaning of 'modification' see PARA 33 note 46 ante.

13 Railways Act 1993 s 13(1)(b). As to conditions of licences see PARAS 84, 85 ante; and as to modification references to the Competition Commission by the Office of Rail Regulation see PARA 89 et seq post. As to the annual reports by the Office of Rail Regulation on the Commission's activities so far as relating to references made by the Office of Rail Regulation see PARA 57 ante. The annual reports of the Office of Rail Regulation indicate that no referrals have yet been made by the Office of Rail Regulation to the Competition Commission.

As soon as practicable after making a reference under s 13 (as amended) (or a variation of such a reference) the Office of Rail Regulation must serve a copy of the reference (or variation) on the holder of the licence and must publish particulars of the reference (or variation) in such manner as it considers appropriate for the

purpose of bringing the reference (or variation) to the attention of persons likely to be affected by it: s 13(4) (amended by the Transport Act 2000 s 216, Sch 17 Pt I paras 1, 7(6)(b); and the Railways Act 2005 Sch 1 Pt 1 para 6(a)). For the meaning of 'licence holder' see PARA 83 note 6 ante. The Office of Rail Regulation must also send a copy of such a reference (or a variation of such a reference) to the Secretary of State; and, if before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Competition Commission not to proceed with the reference (or, as the case may require, not to give effect to the variation) the Commission must comply with the direction: Railways Act 1993 s 13(5) (amended by the Railways Act 2005 Sch 1 Pt 1 para 6(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)). As to the Secretary of State see PARA 35 ante; and as to the general duties imposed on him by the Railways Act 1993 s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (ss 4-83) (as amended) see PARA 33 ante.

14 Ibid s 13(3) (amended by the Railways Act 2005 Sch 1 Pt 1 para 6(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)).

15 Railways Act 1993 s 13(3)(a) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 7(1), (5)(b)).

16 Railways Act 1993 s 13(3)(b) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 7(1), (5)(b)).

17 Railways Act 1993 s 13(6) (amended by the Railways Act 2005 Sch 1 Pt 1 para 6(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)).

18 As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post).

19 Ibid s 13(6)(a) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 7(8)(b), (c); and the Railways Act 2005 Sch 1 Pt 1 para 6(a)).

20 Railways Act 1993 s 13(6)(b) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 7(8)(d); and the Railways Act 2005 Sch 1 Pt 1 para 6(a)).

21 Railways Act 1993 s 13(6).

22 Ibid s 13A(1) (as added: see note 3 supra). As to reports on modification references see PARA 89 post. A report of the Competition Commission on a reference under s 13 (as amended) (see the text and notes 1-21 supra) does not have effect, and no action is to be taken in relation to it under s 15 (as amended) (see PARA 90 post), unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Office of Rail Regulation under s 13A(3) (as added and amended): s 13A(2) (as so added; amended by the Railways Act 2005 Sch 1 Pt 1 para 7).

The Office of Rail Regulation may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months: Railways Act 1993 s 13A(3) (as so added; amended by the Railways Act 2005 Sch 1 Pt 1 para 7). However, no more than one extension is possible under the Railways Act 1993 s 13A(3) (as added and amended) in relation to the same reference (s 13A(4) (as so added)); and the Office of Rail Regulation must, in the case of any such extension made by it, publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, and send a copy of what has been so published by it to the holder of the licence (s 13A(5) (as so added; amended by the Railways Act 2005 Sch 1 Pt 1 para 7)).

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89. Competition Commission report on modification references.

The Competition Commission¹, in making a report on a reference² under the provisions relating to references to the Commission regarding modification of licences³:

- 303 (1) must include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of the Commission's conclusions⁴;
- 304 (2) where it concludes that any of the matters specified in the reference operate (or may be expected to operate) against the public interest, must specify in the report the effects adverse to the public interest which those matters have or may be expected to have⁵; and
- 305 (3) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence⁶, must specify in the report modifications by which those effects could be remedied or prevented⁷.

In making any report on such a reference, the Competition Commission must have regard to the following considerations before disclosing any information⁸:

- 306 (a) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Competition Commission thinks is contrary to the public interest⁹;
- 307 (b) the need to exclude from disclosure, so far as practicable: (i) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates¹⁰; or (ii) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests¹¹; and
- 308 (c) the extent to which the disclosure of the information mentioned in head (b)(i) or head (b)(ii) above is necessary for the purposes of the report¹².

A report of the Competition Commission on such a reference¹³ must be made to the Office of Rail Regulation¹⁴; and that Office¹⁵: (A) must, on receiving such a report, send a copy of it to the holder of the licence¹⁶ to which the report relates and to the Secretary of State¹⁷; and (B) must, not less than 14 days after that copy is received by the Secretary of State, publish the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it¹⁸. However, if it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in head (B) above, direct the Office of Rail Regulation to exclude that matter from every copy of the report to be published by virtue of head (B) above¹⁹.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARA 9 et seq.

2 le under the Railways Act 1993 s 13 (as amended) (see PARA 88 ante): see s 14(1) (as amended: see note 3 infra).

3 Ibid s 14(1) (amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)). For the meaning of 'licence' see PARA 83 note 6 ante. As to the meaning of 'modification' see PARA 33 note 46 ante.

As to the application of the Railways Act 1993 s 14 (as amended), with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(b); and PARA 98 note 5 post.

4 Railways Act 1993 s 14(1)(a).

For these purposes, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of the Competition Act 1998 s 45(7), Sch 7 para 15 (as amended) (discharge of certain functions by groups: see COMPETITION vol 18 (2009) PARA 11); Railways Act 1993 s 14(1A) (s 14(1A), (1B) added by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (5)(a)). If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under the Railways Act 1993 s 13 (as amended) (see PARA 88 ante) above as the conclusions of the Competition Commission, the report is, if the member so wishes, to include a statement of his disagreement and of his reasons for disagreeing: s 14(1B) (as so added).

5 Ibid s 14(1)(b). See note 4 supra.

6 As to conditions of licences see PARAS 84, 85 ante.

7 Railways Act 1993 s 14(1)(c). See note 4 supra. As to modifications of conditions of licences following reports of the Competition Commission under s 14 (as amended) see PARA 90 post. However, nothing in s 14 (as amended) applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence: s 14(7).

8 Ibid s 14(3A) (s 14(3A)-(3D) added by the Enterprise Act 2002 Sch 25 para 30(1), (5)(b)). For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under the Railways Act 1993 s 13 (as amended) (see PARA 88 ante): s 14(3) (substituted by the Enterprise Act 2002 Sch 25 para 30(1), (5)(b)). As to absolute privilege see LIBEL AND SLANDER vol 28 (Reissue) PARA 94 et seq.

9 Railways Act 1993 s 14(3B) (as added: see note 8 supra).

10 Ibid s 14(3C)(a) (as added: see note 8 supra).

11 Ibid s 14(3C)(b) (as added: see note 8 supra).

12 Ibid s 14(3D) (as added: see note 8 supra).

13 le under ibid s 13 (as amended) (see PARA 88 ante): see s 14(4) (as amended: see note 14 infra).

14 Ibid s 14(4) (amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 8(a); and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)).

As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. As to things done under or for the purposes of any provision of ss 13-15C (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 Sch 1 para 10(1), (2). As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

15 Railways Act 1993 s 14(5) (amended by the Railways Act 2005 Sch 1 Pt 1 para 8(a)).

16 For the meaning of 'licence holder' see PARA 83 note 6 ante.

17 Railways Act 1993 s 14(5)(a).

As to the Secretary of State see PARA 35 ante; and as to the general duties imposed on him by s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (as amended) see PARA 33 ante.

- 18 Ibid s 14(5)(b) (amended by the Transport Act 2000 s 216, Sch 17 Pt I paras 1, 8(1), (3)(b)).
- 19 Railways Act 1993 s 14(6) (amended by the Railways Act 2005 Sch 1 Pt 1 para 8(a)).

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90. Modification of licences by the Office of Rail Regulation following report.

Where a report of the Competition Commission¹ on a reference² under the provisions relating to references to the Commission regarding modification of licences³:

- 309 (1) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest⁴;
- 310 (2) specifies effects adverse to the public interest which those matters have or may be expected to have⁵;
- 311 (3) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence⁶; and
- 312 (4) specifies modifications by which those effects could be remedied or prevented⁷,

the Office of Rail Regulation⁸ must⁹, make such modifications of the conditions of that licence as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report¹⁰.

Before making, or requiring the making of, such modifications, the Office of Rail Regulation must have regard to the modifications specified in the report¹¹; and, before making such modifications itself, must give notice¹²:

- 313 (a) stating that it proposes to make the modifications and setting out their effect¹³;
- 314 (b) stating the reasons why it proposes to make the modifications¹⁴; and
- 315 (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made¹⁵.

The Office of Rail Regulation must consider any representations or objections which are duly made and not withdrawn¹⁶.

Where, after considering any representations or objections which are duly made and not withdrawn, the Office of Rail Regulation proposes to make, or require the making of, modifications¹⁷, it must give notice to the Competition Commission¹⁸: (i) setting out the modifications it proposes to make or require to be made¹⁹; and (ii) stating the reasons why it proposes to make the modifications or require the making of them²⁰. If the period, within which a direction may be given by the Competition Commission not to make (or require the making of) the modifications which are set out in such a notice²¹, expires without such a direction being given, the Office of Rail Regulation must make (or require the making of) the modifications set out in the notice²². However, if a direction is given by the Competition Commission not to make specified modifications²³, the Office of Rail Regulation must make (or require the making of) such of those modifications as are not specified in the direction²⁴.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARA 9 et seq.

2 le under the Railways Act 1993 s 13 (as amended) (see PARA 88 ante): see s 15(1) (as amended: see note 3 infra).

3 Ibid s 15(1) (amended by the Transport Act 2000 ss 216, 274, Sch 17 Pt I paras 1, 9(1), (2)(a), (b), Sch 31 Pt IV; and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)). For the meaning of 'licence' see PARA 83 note 6 ante. As to the meaning of 'modification' see PARA 33 note 46 ante. As to reports of the Competition Commission on modification references see PARA 89 ante.

As to the application of the Railways Act 1993 ss 15-16 (as amended), with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(b), Pt 2 para 4; and PARA 98 note 5 post.

4 Railways Act 1993 s 15(1)(a).

5 Ibid s 15(1)(b).

6 Ibid s 15(1)(c). As to conditions of licences see PARAS 84, 85 ante. However, nothing in s 15 (as amended) applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence: s 15(6).

7 Ibid s 15(1)(d).

8 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by ibid s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. As to things done under or for the purposes of any provision of ss 13-15C (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 Sch 1 para 10(1), (2). As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

9 le subject to the provisions of the Railways Act 1993 s 15(2)-(6) (as amended) (see the text and notes 6 supra, 11-24 infra) and s 15A (as added and amended) (see PARA 91 post): see s 15(1A) (as added and amended: see note 10 infra).

10 Ibid s 15(1A) (added by the Transport Act 2000 Sch 17 Pt I paras 1, 9(1), (3); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

The Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (the 'relevant authority') may make an order (a 'relevant order'), which may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order: see the Railways Act 1993 s 16 (amended by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 10(1)-(3); and the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). As to the Secretary of State see PARA 35 ante; and as to the general duties imposed on him by the Railways Act 1993 s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (ss 4-83) (as amended) see PARA 33 ante. As to the concurrent functions of the Office of Rail Regulation and the Office of Fair Trading in enforcing competition law in the rail sector see PARA 186 post. As to the Office of Fair Trading generally see COMPETITION vol 18 (2009) PARA 6 et seq.

11 Ibid s 15(2) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 9(1), (4); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 ss 1(1), 59(6), Sch 1 Pt 1 para 9(b), Sch 13 Pt 1).

12 Railways Act 1993 s 15(3) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 9(1), (5); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

A notice under the Railways Act 1993 s 15(3) (as amended) is given by publishing the notice in such manner as the Office of Rail Regulation considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications and by serving a copy of the notice on the holder of the licence: s 15(4) (amended by the Transport Act 2000 Sch 17 Pt I paras 1, 9(1), (7); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 9(c), Sch 13 Pt 1). For the meaning of 'licence holder' see PARA 83 note 6 ante; and for the meaning of 'notice' see PARA 34 note 4 ante.

13 Railways Act 1993 s 15(3)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

14 Railways Act 1993 s 15(3)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

15 Railways Act 1993 s 15(3)(c).

16 Ibid s 15(3).

17 Ie under ibid s 15 (as amended): see s 15(4A) (as added and amended: see note 18 infra).

18 Ibid s 15(4A) (s 15(4A)-(4D) added by the Transport Act 2000 s 242(1); the Railways Act 1993 s 15(4A) amended by the Railways and Transport Safety Act 2003 s 118, Sch 2 Pt 1 paras 1, 3(a), 7(a), Sch 8; and the Railways Act 2005 Sch 1 Pt 1 para 9(b), Sch 13 Pt 1). The Office of Rail Regulation must include with the notice under the Railways Act 1993 s 15(4A) (as added and amended) a copy of any representations and objections which have been considered: s 15(4B) (as so added; amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 9(b), Sch 13 Pt 1).

19 Railways Act 1993 s 15(4A)(a) (as added (see note 18 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b), 7(b), Sch 8; and the Railways Act 2005 Sch 1 Pt 1 para 9(b), Sch 13 Pt 1).

20 Railways Act 1993 s 15(4A)(b) (as added (see note 18 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b), 7(b), Sch 8; and the Railways Act 2005 Sch 1 Pt 1 para 9(b), Sch 13 Pt 1).

21 Ie under the Railways Act 1993 s 15A (as added and amended) (see PARA 91 post): see s 15(4C) (as added and amended: see note 22 infra).

22 Railways Act 1993 s 15(4C) (as added (see note 18 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 9(b), Sch 13 Pt 1).

23 Ie under the Railways Act 1993 s 15A(1)(b) (as added) (see PARA 91 post): see s 15(4D) (as added and amended: see note 24 infra).

24 Railways Act 1993 s 15(4D) (as added (see note 18 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 9(b), Sch 13 Pt 1).

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91. Competition Commission's powers to make or to veto modifications following report.

The Competition Commission¹ may, within the period of four weeks beginning with the day on which it is given notice² that the Office of Rail Regulation³ proposes to make (or to require the making of) modifications⁴ of the conditions of a licence⁵, give a direction to the Office of Rail Regulation⁶ either:

- 316 (1) not to make (or require the making of) the modifications set out in the notice⁷; or
- 317 (2) not to make such of those modifications as are specified in the direction⁸.

However, the Competition Commission may give such a direction only if the modifications to which it relates do not appear to the Commission requisite for the purpose of remedying or preventing the adverse effects specified in its report on the reference⁹.

If the Competition Commission gives such a direction, it must give notice¹⁰:

- 318 (a) setting out the modifications contained in the notice¹¹;
- 319 (b) setting out the direction¹²; and
- 320 (c) stating the reasons why the Commission is giving the direction¹³;

and the Commission must itself make such modifications of the conditions of the licence as appear to it requisite for the purpose of remedying or preventing¹⁴:

- 321 (i) the adverse effects specified in its report on the reference¹⁵; or
- 322 (ii) such of those adverse effects as would not be remedied or prevented by the modifications made by the Office of Rail Regulation¹⁶.

However, before so making modifications, the Competition Commission must give notice¹⁷:

- 323 (A) stating that it proposes to make the modifications and setting out their effect¹⁸;
- 324 (B) stating the reasons why it proposes to make the modifications¹⁹; and
- 325 (C) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made²⁰.

The Competition Commission must consider any representations or objections which are duly made and not withdrawn²¹.

As soon as practicable after making any such modifications, the Competition Commission must send a copy of those modifications to the Office of Rail Regulation²².

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARA 9 et seq.

2 le under the Railways Act 1993 s 15(4A) (as added and amended) (see PARA 90 ante): see s 15A(1) (as added and amended: see note 6 infra). The Secretary of State may, if an application is made to him by the Competition Commission within that period of four weeks, extend the period within which a direction may be given under s 15A (as added and amended) to one of six weeks beginning with the day on which the Competition Commission is given notice: s 15A(2) (ss 15A-15C added by the Transport Act 2000 s 242(2)). For the meaning of 'notice' see PARA 34 note 4 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties imposed on him by the Railways Act 1993 s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (ss 4-83) (as amended) see PARA 33 ante.

As to the application of ss 15-16 (as amended), with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(b), Pt 2 para 5; and PARA 98 note 5 post.

3 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (as amended): see PARA 33 ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of licences and related matters see PARA 56 ante. As to things done under or for the purposes of any provision of ss 13-15C (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 Sch 1 para 10(1), (2). As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

4 As to the meaning of 'modification' see PARA 33 note 46 ante.

5 For the meaning of 'licence' see PARA 83 note 6 ante. As to conditions of licences see PARAS 84, 85 ante; and as to reports of the Competition Commission on modification references see PARA 89 ante.

6 Railways Act 1993 s 15A(1) (as added (see note 2 supra); amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 s 59(6), Sch 13 Pt 1).

For the purpose of assisting the Competition Commission in exercising its functions under the Railways Act 1993 ss 15A-15B (as added and amended), it is the duty of the Office of Rail Regulation to give to the Commission any information in the possession of that Office which relates to matters relevant to the exercise of those functions and either is requested by the Commission for that purpose or is information which, in the opinion of that Office, it would be appropriate for that purpose to give to the Commission without any such request, and to give to the Commission any other assistance which the Commission may require, and which it is within the power of the Office of Rail Regulation to give, in relation to any such matters: see s 15C(3) (as so added; amended by the Railways and Transport Safety Act 2003 s 118, Sch 2 Pt 1 paras 1, 3(a), 8, Sch 8; and the Railways Act 2005 Sch 13 Pt 1). The Competition Commission, for the purpose of exercising its functions under the Railways Act 1993 ss 15A-15B (as added and amended), must take account of any information thus given to it for that purpose: s 15C(4) (as so added).

Certain provisions of the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended) (see COMPETITION) apply, with modifications, for the purposes of any investigation by the Competition Commission under the Railways Act 1993 ss 15A-15B (as added and amended) as they apply for the purposes of references under the Enterprise Act 2002 Pt 3 (as amended): see the Railways Act 1993 s 15C(2D)-(2I) (s 15C(2A)-(2I) added by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (6); the Railways Act 1993 s 15C(2E), (2F) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 s 15C(2G) amended by the Communications Act 2003 s 389(1), Sch 16 para 4(1), (3)).

7 Railways Act 1993 s 15A(1)(a) (as added: see note 2 supra).

8 Ibid s 15A(1)(b) (as added: see note 2 supra).

9 Ibid s 15A(3) (as added: see note 2 supra). The text refers to the Competition Commission's report on the reference under s 13 (as amended) (see PARA 88 ante): see s 15A(3) (as so added).

10 Ibid s 15A(4) (as added: see note 2 supra). A notice under s 15A(4) (as added) must be given by publishing the notice in such manner as the Competition Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the direction and by serving a copy of the notice on the holder of the licence: s 15A(5) (as so added). For the meaning of 'licence holder' see PARA 83 note 6 ante.

In giving any notice under s 15(4A) (as added) or s 15B(3) (as added) (see the text and note 17 infra), the Competition Commission must have regard to the following considerations before disclosing any information (s 15C(2) (s 15C(1), (2) substituted by the Enterprise Act 2002 Sch 25 para 30(1), (6))):

- 70 (1) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Competition Commission thinks is contrary to the public interest (Railways Act 1993 s 15C(2A) (as added: see note 6 supra);
- 71 (2) the need to exclude from disclosure, so far as practicable: (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates (s 15C(2B)(a) (as so added)); or (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests (s 15C(2B)(b) (as so added)); and
- 72 (3) the extent to which the disclosure of the information mentioned in head (2)(a) or head (2)(b) supra is necessary for the purposes of the report (s 15C(2C) (as so added)).

For the purposes of the law relating to defamation, absolute privilege attaches to any notice under s 15(4A) (as added) or s 15B(3) (as added): s 15C(1) (as so substituted). As to absolute privilege see LIBEL AND SLANDER vol 28 (Reissue) PARA 94 et seq.

11 Ibid s 15A(4)(a) (as added: see note 2 supra). The text refers to the notice given under s 15(4A) (as added and amended) (see PARA 90 ante): see s 15A(4)(a) (as so added).

12 Ibid s 15A(4)(b) (as added: see note 2 supra).

13 Ibid s 15A(4)(c) (as added: see note 2 supra).

14 Ibid s 15B(1) (as added: see note 2 supra). In exercising the function conferred by s 15B(1) (as added), the Competition Commission is to have regard to the matters as respects which duties are imposed on the Office of Rail Regulation by s 4 (as amended) (see note 3 supra): s 15B(2) (as so added; amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

15 Railways Act 1993 s 15B(1)(a) (as added: see note 2 supra). The text refers to the Competition Commission's report on the reference under s 13 (as amended) (see PARA 88 ante): see s 15B(1)(a) (as so added).

16 Ibid s 15B(1)(b) (as added (see note 2 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 13 Pt 1). The text refers to modifications made by the Office of Rail Regulation under the Railways Act 1993 s 15(4D) (as added and amended) (see PARA 90 ante): see s 15B(1)(b) (as so added and amended).

17 Ibid s 15B(3) (as added: see note 2 supra). A notice under s 15B(3) (as added) must be given by publishing the notice in such manner as the Competition Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications and by serving a copy of the notice on the holder of the licence: s 15B(4) (as so added). As to the notice so given see further note 10 supra.

18 Ibid s 15B(3)(a) (as added: see note 2 supra).

19 Ibid s 15B(3)(b) (as added: see note 2 supra).

20 Ibid s 15B(3)(c) (as added: see note 2 supra).

21 Ibid s 15B(3) (as added: see note 2 supra).

22 Ibid s 15B(5) (as added (see note 2 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 13 Pt 1).

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(C) LICENCE EXEMPTIONS GRANTED UNDER THE

92. Exemption from the need to be a licensed operator of railway assets.

Unless any person who acts as the operator¹ of a railway asset²:

- 326 (1) is authorised to be the operator of that railway asset by a licence³; or
- 327 (2) is exempt⁴ from the requirement to be so authorised⁵,

he is guilty of an offence⁶.

The Secretary of State⁷ may, after consultation with the Office of Rail Regulation⁸, by order grant exemption⁹ from the requirement to be authorised by licence to be the operator of such railway assets, or of railway assets of such a class or description¹⁰, as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified¹¹. Such a licence exemption may be granted either to persons of a particular class or description¹² or to a particular person¹³, and a licence exemption granted to persons of a particular class or description must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class or description¹⁴.

If any person makes an application to the Office of Rail Regulation for the grant of an exemption from the requirement to be authorised by licence to be the operator of such railway assets (or of railway assets of such a class or description) as he may specify in the application¹⁵, the Office of Rail Regulation, after consultation with the Secretary of State¹⁶: (a) may either grant or refuse the exemption, whether wholly or to such extent as it may specify in the exemption¹⁷; and (b) if and to the extent that it grants the exemption, may do so subject to compliance with such conditions (if any) as it may so specify¹⁸. Before granting such a licence exemption, the Office of Rail Regulation must give notice¹⁹:

- 328 (i) stating that it proposes to grant the licence exemption²⁰;
- 329 (ii) stating the reasons why it proposes to grant the licence exemption²¹; and
- 330 (iii) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence exemption may be made²²;

and that Office must consider any representations or objections which are duly made and not withdrawn²³.

If any condition (the 'broken condition') of a licence exemption is not complied with, the Secretary of State²⁴ or the Office of Rail Regulation²⁵ may give to any relevant person²⁶ a direction²⁷ declaring that the licence exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction²⁸. Subject to the revocation of the licence exemption²⁹, a licence exemption, unless previously revoked in accordance with any term contained in the licence exemption, continues in force for such period as may be specified in, or determined by or under, the licence exemption³⁰.

Licence exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases³¹.

1 For the meaning of 'operator' see PARA 83 note 7 ante.

2 For the meaning of 'railway asset' see PARA 83 note 7 ante.

The Railways Act 1993 s 6 (as amended) does not apply to a person who acts as the operator of a railway asset to the extent that the asset is operated for the purpose of providing services for which a European licence is required: see s 6(1A) (as added and amended); and PARA 367 post. For the purposes of Pt I (ss 4-83) (as amended) (the provision of railway services: see PARA 33 et seq ante), 'European licence' means a licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L75, 15.03.2001, p 26); and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)) (as to which see PARA 30 ante), or pursuant to any action taken by an EEA State for that purpose: Railways Act 1993 ss 6(2), 83(1) (definition added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (3)(a), 8(a)). For these purposes, 'EEA State' means a member State, Norway, Iceland or Liechtenstein: Railways Act 1993 s 6(2A) (definition added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 3(1), (4)). 'Member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1. Also see PARA 93 note 3 post. In relation to the United Kingdom, compliance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (as amended) is effected by means of the Railways Act 1993 ss 6-11 (as amended) (see PARA 83 et seq ante) and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (see PARA 93 et seq post). A business is regulated for the purposes of the Insolvency Act 1986 s 72D (as added) if it is carried on in reliance on a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 95/18/EC (OJ L143, 27.06.1995, p 70) (as amended), or pursuant to any action taken by an EEA State for that purpose: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 385.

3 See the Railways Act 1993 s 6(1)(a); and note 2 supra. For the meaning of 'licence' see PARA 83 note 6 ante. As to applications under the Railways Act 1993 for licences authorising persons to be operators of railway assets see PARA 83 ante; as to conditions of licences see PARAS 84, 85 ante; and as to modifications of licences under the Railways Act 1993 and other enactments see PARA 87 et seq ante.

4 Ie by virtue of ibid s 7 (as amended) (see the text and notes 7-31 infra): see s 6(1)(b).

5 See ibid s 6(1)(b); and note 2 supra.

6 See ibid s 6(1); and PARA 367 post. See also note 2 supra.

7 As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under ibid Pt I (as amended), see s 4 (as amended); and PARA 33 ante.

8 As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under ibid Pt I (as amended), see s 4 (as amended); and PARA 33 ante.

9 For these purposes, 'licence exemption' means an exemption, granted under any provision of ibid s 7 (as amended) in respect of a railway asset or in respect of railway assets of any class or description, from the requirement to be authorised by licence to be the operator of that railway asset or, as the case may be, railway assets of that class or description: ss 7(13), 83(1). As to the making of orders under the Railways Act 1993 generally see PARA 35 note 12 ante; and as to the orders so made see note 11 infra. As to the circumstances in which the defence of statutory authority is available to operators of a network, etc who have the benefit of a licence exemption see PARA 427 post.

10 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

11 Ibid s 7(1) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 ss 1(1), 59(6), Sch 1 Pt 1 para 1(1)(a), Sch 13 Pt 1). For the purposes of the Railways Act 1993 s 7 (as amended), 'condition', in relation to a licence exemption, means any condition subject to compliance with which the licence exemption was granted: Railways Act 1993 s 7(7) (amended by the Transport Act 2000 s 216, Sch 17 Pt I paras 1, 2(1), (6)). The Secretary of State, in exercise of his powers under the

Railways Act 1993 s 7(1) (as amended), has made the Railways (London Regional Transport) (Exemptions) Order 1994, SI 1994/573 (amended by the Greater London Authority Act 1999 s 198; and SI 2003/1615); the Railways (Heathrow Express) (Exemptions) Order 1994, SI 1994/574 (amended by SI 2002/2703); the Railways (Class and Miscellaneous Exemptions) Order 1994, SI 1994/606; and the Strategic Rail Authority (Licence Exemption) Order 2001, SI 2001/218.

As from a day to be appointed under the Greater London Authority Act 1999 s 425(2), the Secretary of State may, after consultation with the Office of Rail Regulation, by order grant at any time a licence exemption under the Railways Act 1993 s 7(1) (as amended) in respect of railway assets comprised in, or used on or in connection with, a network on which some or all of the regular scheduled passenger services are operated by London Regional Transport or Transport for London or a subsidiary of London Regional Transport or Transport for London: see the Greater London Authority Act 1999 s 199(1), (2) (s 199(1) amended by the Transport Act 2000 s 274, Sch 31 Pt IV; the Railways and Transport Safety Act 2003 Sch 2 Pt 2 para 19(q); and the Railways Act 2005 Sch 13 Pt 1). However, the power so conferred is exercisable only if the Secretary of State has received an application for the grant of the exemption from the appropriate London transport authority (see the Greater London Authority Act 1999 s 199(3)), where 'appropriate London transport authority' means: (1) as respects any time before the transfer date, London Regional Transport (s 199(4)(a)); and (2) as respects any time on or after that date, Transport for London (s 199(4)(b)); and 'transfer date' means the date on which London Underground Limited becomes a subsidiary of Transport for London (s 199(4)). However, at the date at which this volume states the law, no such day had been appointed. As to Transport for London see PARA 66 et seq ante; and as to the duty of the Office of Rail Regulation to have regard to the ability of the Mayor of London and Transport for London to carry out the functions conferred or imposed on them see PARA 33 ante.

As to the liability of a person who has been granted a licence exemption under the Railways Act 1993 s 7 (as amended) to make good damage to crops caused by their engines see the Railway Fires Act 1905; and PARA 301 post.

A business is regulated for the purposes of the Insolvency Act 1986 s 72D (as added) if it is carried on in reliance on a licence exemption under the Railways Act 1993 s 7 (as amended) and if on some part of the railway there is a permitted line speed exceeding 40 kilometres per hour: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 385.

12 Railways Act 1993 s 7(2)(a).

13 Ibid s 7(2)(b).

14 Ibid s 7(2).

15 The text refers to an application made under ibid s 7(3) (as amended): see s 7(3). Any application for a licence exemption under s 7(3) (as amended) must be made in writing; and where any such application is made, the Office of Rail Regulation may require the applicant to furnish it with such information as the Office of Rail Regulation may consider necessary to enable it to decide whether to grant or refuse the licence exemption: s 7(11) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). See also '*Guidance on Licence Exemptions*' (October 2006) (published by the Office of Rail Regulation) which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see s 146 (cited in PARA 416 post).

16 Ibid s 7(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 1(1)(a), Sch 13 Pt 1).

17 Railways Act 1993 s 7(3)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

18 Railways Act 1993 s 7(3)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b), 4(a)).

19 Railways Act 1993 s 7(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). A notice under the Railways Act 1993 s 7(4) (as amended) is given by publishing the notice in such manner as the Office of Rail Regulation considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence exemption: s 7(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). For the meaning of 'notice' see PARA 34 note 4 ante,

20 Railways Act 1993 s 7(4)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

21 Railways Act 1993 s 7(4)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

22 Railways Act 1993 s 7(4)(c).

23 Ibid s 7(4).

24 Ibid s 7(6)(a). The text refers to the case of a licence exemption under s 7(1) (as amended) (see the text and notes 7-11 supra); see s 7(6)(a).

25 Ibid s 7(6)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). The text refers to the case of a licence exemption under the Railways Act 1993 s 7(3) (as amended) (see the text and notes 15-18 supra); see s 7(6)(b) (as so amended).

26 For these purposes, 'relevant person', in the case of any licence exemption, means a person who has the benefit of the licence exemption and who: (1) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or (2) is the operator of any of the railway assets in relation to which the broken condition is not complied with: *ibid* s 7(7) (as amended: see note 11 supra).

27 As to directions given under the Railways Act 1993 see s 144 (as amended); and PARA 29 note 13 ante.

28 Ibid s 7(6). Where the Secretary of State or the Office of Rail Regulation gives a direction under s 7(6) (as amended) to any person, he or it may also direct that person to refrain from being the operator of any railway assets or of such railway assets, or railway assets of such a class or description, as may be specified in the direction by virtue of s 7(8) (as amended): s 7(8) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), 4(b)).

29 *Ie* subject to the Railways Act 1993 s 7(6) (as amended) (see the text and notes 24-28 supra); see s 7(9) (as amended: see note 30 infra).

30 Ibid s 7(9) (amended by the Railways Act 2005 Sch 1 Pt 1 para 1(2)).

31 Railways Act 1993 s 7(12).

The Secretary of State may make a scheme making such modifications of the provisions of any licence or licence exemption granted under s 7(3) (as amended) (see the text and notes 15-18 supra) as appear to him to be necessary or expedient in consequence of the Railways Act 2005 ss 1, 2, 21, 48, Schs 1, 3, 6 (see PARA 6 et seq ante), by virtue of which (s 59(2), (3)): (1) functions are transferred (with or without modifications) from one person to another (s 59(2)(a)); or (2) functions corresponding (with or without modifications) to functions previously conferred on one person become functions of another (s 59(2)(b)). Such a scheme may include provision for things done by or in relation to a person who previously had a function to be treated as done by or in relation to the person on whom that function, or the corresponding function, is conferred by virtue of the Railways Act 2005: s 59(4). Where such a scheme makes a modification of the provisions of a licence or licence exemption, the Secretary of State must: (a) in the case of a modification of the provisions of a licence, notify the licence holder (s 59(5)(a)); and (b) in the case of a modification of the provisions of a licence exemption granted under the Railways Act 1993 s 7(3) (as amended), give such notice as he considers appropriate for bringing the modification to the attention of persons likely to be affected by it (Railways Act 2005 s 59(5)(b)). These provisions (*ie* s 59(2)-(5)) have effect in relation to a European licence and a holder of a European licence as they have effect in relation to a licence and a licence holder respectively: s 59(5A) (added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 6).

The Railways Act 2005 (Licensing Modification) Scheme No 1 (15 August 2005) has been made under the Railways Act 2005 s 59(2).

As to the application, with modifications, of the Railways Act 2005 s 59(2)-(5) for the purposes of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, see reg 14, Sch 3 Pt 1 para 1(g). For the meaning of 'European licence' see note 2 supra; definition applied by the Railways Act 2005 s 58(2). For the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante; definition applied by s 58(2). For the meaning of 'licence exemption' see note 9 supra; definition applied by s 58(2). As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2). As to the meaning of 'functions' see PARA 7 note 12 ante; definition applied by s 58(2).

UPDATE

92 Exemption from the need to be a licensed operator of railway assets

NOTE 11--SI 1994/573 further amended: SI 2009/3336.

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B. LICENSING REGIME APPLICABLE THROUGHOUT THE EEA STATES

(A) EUROPEAN LICENCES

93. Prohibition on unlicensed provision of services.

Where a person is a railway undertaking¹, that person must not provide a train service in Great Britain² unless authorised to do so by a European licence³ which is appropriate for that train service⁴.

Any person who provides such a service without such a licence is guilty of an offence⁵.

¹ Ie where a person is a railway undertaking to which the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, apply: see reg 5(1). The provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, apply in relation to the licensing of railway undertakings which provide train services and are established or to be established in an EEA state: reg 4(1). However, those regulations do not apply in relation to a railway undertaking whose activity is limited to any of the following:

- 73 (1) operating rail passenger services on local and regional stand-alone railway infrastructure (reg 4(2)(a));
- 74 (2) operating urban or suburban rail passenger services (reg 4(2)(b));
- 75 (3) the provision of regional rail freight services that are not covered by the scope of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) (as amended) (as to which see PARA 30 et seq ante) (Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 4(2)(c));
- 76 (4) carrying out freight operations on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations (reg 4(2)(d)); or
- 77 (5) providing shuttle services for road vehicles through the Channel Tunnel (reg 4(2)(e)).

For these purposes, 'EEA state' means a Member State, Norway, Iceland or Liechtenstein; and 'train service' means a service for the transport of goods or passengers (or both) by rail: reg 2(1). 'Railway undertaking' means any public or private undertaking the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction (which also includes undertakings which provide traction only): Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) art 2(a) (definition substituted by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L75, 15.03.2001, p 26)); definition applied by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 2(2). 'Regional services' means transport services operated to meet the transport needs of a region; and 'urban and suburban services' means transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas: Council Directive 95/18/EC (OJ L143, 27.06.1995, p 70) art 2(d); definition applied by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 2(2). As to the Channel Tunnel see PARA 324 post.

² For the meaning of 'Great Britain' see PARA 29 note 3 ante.

³ For these purposes, 'European licence' means a licence granted to a railway undertaking pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, valid throughout the territory of any EEA state, by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide in and between EEA states such train services as may be specified in the licence: reg 2(1). In reg 5, the expression 'European licence' includes a licence granted pursuant to any action taken by an

EEA state for the purpose of implementing Council Directive 95/18/EC (OJ L143, 27.06.1995, p 70) (as amended): Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 5(4). 'Licence' means an authorisation issued by a Member State to an undertaking by which its capacity as a railway undertaking is recognised (and where that capacity may be limited to the provision of specific types of services): Council Directive 95/18/EC (OJ L143, 27.06.1995, p 70) art 2(b); definition applied by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 2(2).

4 Ibid reg 5(1). As to licences granted under the Railways Act 1993 see PARA 83 ante.

5 See ibid reg 5(1); and PARA 368 post.

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94. Granting of European licences by the Office of Rail Regulation.

The Office of Rail Regulation (ORR)¹ is designated as the body responsible for granting European licences². It must determine and publish on its website the procedures for the granting of European licences and inform the European Commission of those procedures³.

The Office of Rail Regulation must⁴ grant a European licence to a railway undertaking⁵ if that undertaking:

- 331 (1) is established in Great Britain⁶; and
- 332 (2) makes an application to the Office of Rail Regulation in accordance with the published procedures⁷.

An applicant must submit with his application such application fee as the Office of Rail Regulation may reasonably require⁸ and such information⁹ as that Office reasonably requires in order to be satisfied that the applicant satisfies the requirements which set out the qualifications for a European licence¹⁰. The Office of Rail Regulation must grant a European licence if, and only if, it is satisfied before the start of the applicant's activities that the applicant will be able at any time to satisfy the qualifications for a European licence¹¹ as to good repute, financial fitness, professional competence and insurance cover for civil liabilities¹².

An application for a European licence must be determined by the Office of Rail Regulation as soon as possible and in any event within three months of receipt of all the information that is required¹³. In respect of each application for a European licence, the Office of Rail Regulation must give notice¹⁴ stating:

- 333 (a) that the applicant has made an application for a European licence¹⁵;
- 334 (b) the name of the applicant and the address of its registered or principal office¹⁶; and
- 335 (c) a summary of the activities which the applicant wishes to carry out pursuant to the European licence¹⁷.

The Office of Rail Regulation must inform the applicant of its decision¹⁸. Where it refuses to grant a European licence, the refusal must state the reasons for its decision¹⁹.

When the Office of Rail Regulation grants a European licence²⁰ it must forthwith inform the European Commission of the grant²¹.

A European licence may authorise the provision of train services²² generally or be restricted to particular types of service specified in the licence²³.

1 For these purposes, 'ORR' means the Office of Rail Regulation, being the body established under the Railways and Transport Safety Act 2003 s 15 (see PARA 49 et seq ante): Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 2(1).

2 Ibid reg 6(1). For the meaning of 'European licence' see PARA 93 note 3 ante.

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, see PARA 93 note 1 ante.

3 Ibid reg 6(2). At the date at which this volume is published, the procedures mentioned in the text are published as *Railway Licensing: Guidance for Applicants* (March 2006) on the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

4 Ie subject to and in accordance with the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050.

5 For the meaning of 'railway undertaking' see PARA 93 note 1 ante.

6 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 6(3)(a). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

7 Ibid reg 6(3)(b).

8 Any sums received by the Office of Rail Regulation under ibid reg 6 must be paid into the Consolidated Fund: reg 6(13). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

9 Ie information specified in the published procedures referred to in ibid reg 6(3)(b) (see head (2) in the text): see reg 6(5).

The Railways Act 1993 s 145 (as amended) (restriction on disclosure of information) (see PARA 419 post) has effect in relation to information which has been obtained under or by virtue of any provision of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 and which relates to the affairs of any individual or to any particular business as it has effect in relation to such information obtained under or by virtue of any of the provisions of the Railways Act 1993: Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 18. As to the offence of making false statements, etc in giving any information or making any application under or for the purposes of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 417 post.

10 Ibid reg 6(5). The requirements mentioned in the text are those referred to in reg 6(14), Sch 2 (as to which see PARA 95 post): see reg 6(5). At any time after submitting the application, the applicant must submit such further information as the Office of Rail Regulation may reasonably require in connection with the application: reg 6(6).

11 Ie the requirements referred to in ibid Sch 2 (as to which see PARA 95 post): see reg 6(7).

12 Ibid reg 6(7).

13 Ibid reg 6(8). The text refers to receipt of all the information that is referred to in reg 6(5), (6) (as to which see the text and notes 8-10 supra): reg 6(8).

14 Ibid reg 6(9). A notice under reg 6(9) must be given by publishing the notice in such manner as the Office of Rail Regulation considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the European licence: reg 6(10).

15 Ibid reg 6(9)(a).

16 Ibid reg 6(9)(b).

17 Ibid reg 6(9)(c).

18 Ibid reg 6(11).

19 Ibid reg 6(11).

20 Ie in accordance with ibid reg 6: see reg 6(12).

21 Ibid reg 6(12).

22 For the meaning of 'train service' see PARA 93 note 1 ante.

23 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 6(4).

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95. Qualifications for European licences granted by the Office of Rail Regulation.

The Office of Rail Regulation¹ must grant a European licence² if, and only if, it is satisfied before the start of the applicant's activities that the applicant will be able at any time to satisfy the qualifications for a European licence³. These requirements for qualification⁴ are grouped under the headings of:

- 336 (1) good repute⁵;
- 337 (2) financial fitness⁶;
- 338 (3) professional competence⁷; and
- 339 (4) insurance cover for civil liabilities⁸.

For the purposes of head (1) above, in determining whether a railway undertaking⁹ is of good repute, the Office of Rail Regulation must have regard to all relevant evidence, including any information in its possession¹⁰ as to the previous conduct of any appropriate officer¹¹ of the undertaking if that conduct appears to it to relate to the undertaking's fitness to hold a European licence¹². Without prejudice to the generality of these powers¹³, the Office of Rail Regulation must not determine that a railway undertaking is of good repute if¹⁴:

- 340 (a) an order has been made by the court for the winding up of the undertaking or the sequestration of its estate under insolvency legislation or any appropriate officer of the undertaking for the time being has been adjudged bankrupt or his estate has been sequestrated under that legislation¹⁵;
- 341 (b) the undertaking or any appropriate officer of the undertaking has been convicted of a serious offence, including in particular an offence contrary to the law relating to commercial transactions, or the law relating to transport¹⁶; or
- 342 (c) the undertaking or any appropriate officer of the undertaking has been convicted of a serious offence which is contrary to either of the following laws, or has been convicted repeatedly of offences which are contrary to either of those laws¹⁷, namely: (i) social or labour law (including legislation relating to occupational health and safety)¹⁸; or (ii) in the case of an undertaking seeking to operate cross-border goods transport subject to customs procedures, customs law¹⁹.

For the purposes of head (2) above, an applicant for a European licence must be considered to meet the required standard of financial fitness when it can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months²⁰. For the purpose of demonstrating its financial fitness, a railway undertaking must make available to the Office of Rail Regulation the undertaking's annual accounts (or if the undertaking is not able to provide annual accounts then the undertaking's balance sheet) together with details of the following matters (in so far as these cannot be ascertained from the annual accounts or, as the case may be, the balance sheet)²¹:

- 343 (A) the railway undertaking's available funds, including the bank balance, pledged overdraft provisions and loans²²;
- 344 (B) the railway undertaking's funds and assets available as security²³;
- 345 (C) the railway undertaking's working capital²⁴;

- 346 (D) relevant costs, including the railway undertaking's purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock²⁵; and
- 347 (E) charges on the railway undertaking's assets²⁶.

The Office of Rail Regulation may²⁷ request that the railway undertaking provide to it audit reports or other suitable documents as that Office considers necessary in relation to the matters listed in heads (A) to (E) above which have been prepared by a body other than the railway undertaking such as a bank, building society, accountant or auditor²⁸.

For the purposes of head (3) above, the requirement of professional competence is satisfied by a railway undertaking when the undertaking has or will have a management organisation which possesses the knowledge or experience (or both) necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence²⁹.

For the purposes of head (4) above, an applicant for a European licence must be considered to meet the requirement of insurance cover where, in accordance with the law of the United Kingdom or of any part of the United Kingdom and any relevant international law³⁰, the undertaking maintains adequate insurance cover³¹, or has made arrangements having equivalent effect, covering its liabilities in the event of accident to passengers, luggage, freight, mail and third parties³².

1 For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

2 For the meaning of 'European licence' see PARA 93 note 3 ante.

3 See the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 6(7); and PARA 94 ante.

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, see PARA 93 note 1 ante.

4 The requirements setting out the qualifications for a European licence are those referred to in *ibid* reg 6(14), Sch 2: see reg 6(7); and PARA 94 ante.

5 As to which see the text and notes 9-19 *infra*.

6 As to which see the text and notes 20-28 *infra*.

7 As to which see the text and note 29 *infra*.

8 As to which see the text and notes 30-32 *infra*.

9 For the meaning of 'railway undertaking' see PARA 93 note 1 ante.

10 As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 94 note 9 ante.

11 For the purposes of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 2 para 1 and Sch 2 para 2 (as to which see the text and notes 13-19 *infra*), the reference to any appropriate officer of the undertaking is to any director, manager, secretary or similar officer of the undertaking, any other person in charge of the management of the undertaking, or any other person purporting to act in any such capacity: Sch 2 para 5.

12 *Ibid* Sch 2 para 1.

13 *Ie* the generality of the Office of Rail Regulation's powers under *ibid* Sch 2 para 1 (see the text and notes 9-12 *supra*): see Sch 2 para 2.

14 *Ibid* Sch 2 para 2.

15 *Ibid* Sch 2 para 2(a).

16 Ibid Sch 2 para 2(b). For these purposes, a person has been convicted of a serious offence if that offence was committed under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom and if on conviction there was imposed on him for that offence a sentence of imprisonment for a term exceeding three months: Sch 2 para 3(1). The reference in Sch 2 para 3(1) to a sentence of imprisonment includes a reference to any form of custodial sentence or order, other than one imposed under the enactments relating to mental health: Sch 2 para 3(2). Any reference in Sch 2 para 3 to an offence under the law of any part of the United Kingdom includes a reference to a civil offence (wherever committed) within the meaning of the Army Act 1955, the Air Force Act 1955 or, as the case may be, the Naval Discipline Act 1957 (see ARMED FORCES): Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 2 para 4(1). For the purposes of Sch 2 paras 1-3, convictions which are spent for the purposes of the Rehabilitation of Offenders Act 1974 (as to which see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq) must be disregarded (Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 2 para 4(2)(a)) and the Office of Rail Regulation may also disregard an offence if such time as it thinks proper has elapsed since the date of the conviction (Sch 2 para 4(2)(b)). For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

17 Ibid Sch 2 para 2(c).

18 Ibid Sch 2 para 2(c)(i).

19 Ibid Sch 2 para 2(c)(ii).

20 Ibid Sch 2 para 6. The Office of Rail Regulation must not find the railway undertaking to be financially fit if the railway undertaking has substantial arrears of taxes or social security payments which are owed as a result of the undertaking's activity: Sch 2 para 8.

As to the offence of making false statements, etc in giving any information under or for the purposes of those regulations see PARA 418 post.

21 Ibid Sch 2 para 7.

22 Ibid Sch 2 para 7(a).

23 Ibid Sch 2 para 7(b).

24 Ibid Sch 2 para 7(c).

25 Ibid Sch 2 para 7(d).

26 Ibid Sch 2 para 7(e).

27 Ie without prejudice to ibid reg 6(6) (supply of further information required by the Office of Rail Regulation: see PARA 94 ante): see Sch 2 para 9.

28 Ibid Sch 2 para 9.

29 Ibid Sch 2 para 10. A European licence may authorise the provision of train services generally or be restricted to particular types of service specified in the licence: see reg 6(4); and PARA 94 ante.

30 For these purposes, 'relevant international law' means any provisions contained in any international agreement or arrangement to which the United Kingdom is a party and which have the force of law in the United Kingdom: ibid Sch 2 para 11(2).

31 For these purposes, insurance cover is to be considered to be 'adequate' if it has been approved by the Office of Rail Regulation: ibid Sch 2 para 11(3).

32 Ibid Sch 2 para 11(1).

UPDATE

95 Qualifications for European licences granted by the Office of Rail Regulation

NOTE 16--Any reference in SI 2005/3050 Sch 2 para 3 to an offence under the law of any part of the United Kingdom now includes a reference to an offence (wherever

committed) under the Armed Forces Act 2006 s 42 (see ARMED FORCES vol 2(2) (Reissue) PARA 422): SI 2005/3050 Sch 2 para 4(1) (amended by SI 2009/2054).

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96. Validity of European licences.

Unless previously revoked or surrendered¹, a European licence continues in force as long as the Office of Rail Regulation² is satisfied that the railway undertaking³ concerned continues⁴: (1) to satisfy the requirements⁵ as to good repute, financial fitness, professional competence and insurance cover for civil liabilities⁶; and (2) to submit the licence to the Office of Rail Regulation for review or approval when so required⁷.

1 Ie in accordance with the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, or the licence. A European licence may incorporate specific provisions governing the suspension or revocation of the licence: reg 7(2). For the meaning of 'European licence' see PARA 93 note 3 ante.

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, see PARA 93 note 1 ante.

2 For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

3 For the meaning of 'railway undertaking' see PARA 93 note 1 ante.

4 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 7(1).

5 Ie the requirements referred to in *ibid* reg 6(14), Sch 2 (as to which see PARA 95 ante): see reg 7(1)(a).

6 *Ibid* reg 7(1)(a).

7 *Ibid* reg 7(1)(b). The text refers to the submission of the licence to the Office of Rail Regulation when so required under reg 8 (as to which see PARA 97 post): see reg 7(1)(b).

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97. European licensing functions of the Office of Rail Regulation.

If at any time the Office of Rail Regulation¹ considers that there is serious doubt whether a railway undertaking² to which it has granted a European licence³ complies with a European licence qualification requirement⁴, it may take such steps as are necessary to enable it to determine whether or not the undertaking does so comply⁵. If, having taken those steps, the Office of Rail Regulation is satisfied that a railway undertaking does not comply with any such requirement, it must revoke the European licence held by the railway undertaking or suspend it⁶.

The Office of Rail Regulation also must revoke a European licence if:

- 348 (1) proceedings have been commenced for the winding up of a railway undertaking on the grounds that the undertaking is unable to pay its debts⁷; or
- 349 (2) an application for a railway administration order has been made in relation to the railway undertaking⁸ on the grounds that the undertaking is or is likely to be unable to pay its debts⁹,

and the Office of Rail Regulation is satisfied that there is no realistic prospect of satisfactory financial restructuring of the undertaking within a reasonable period of time¹⁰. However, where the Office of Rail Regulation has suspended or revoked a European licence solely on the grounds of the non-compliance by the railway undertaking with the requirements of financial fitness¹¹, the Office may grant to the undertaking a temporary European licence pending the re-organisation of the railway undertaking¹².

Where a railway undertaking to which a European licence has been granted has either ceased the operations to which the licence relates for a continuous period of six months or¹³ has not commenced such operations within six months of the date of such grant, then the Office of Rail Regulation may either require the railway undertaking to resubmit its licence to the Office for approval or suspend the licence¹⁴.

The Office of Rail Regulation also may require a railway undertaking to submit its European licence to the Office for approval in the event of a change affecting the legal situation of that undertaking, in particular following a change in its control or ownership as a result of a merger with or take-over by another undertaking¹⁵. Where a European licence is submitted for approval in this way, the railway undertaking may continue operations whilst its licence is under review, unless the Office of Rail Regulation decides that safety is jeopardised by the change¹⁶. If the Office of Rail Regulation decides that safety is jeopardised by that change, it must notify the railway undertaking of its decision and of the grounds for it¹⁷. A railway undertaking must also submit its licence to the Office of Rail Regulation for review when that undertaking intends significantly to change or extend its activities from those in respect of which a European licence was granted to it¹⁸.

When the Office of Rail Regulation amends, suspends or revokes a European licence, it must forthwith inform the European Commission of such amendment, suspension or revocation¹⁹.

Where the Office of Rail Regulation is satisfied that there is serious doubt whether a railway undertaking to which a European licence has been granted by a licensing authority²⁰ other than

itself complies with any requirement of the EC Council Directive of 19 June 1995 on the licensing of railway undertakings²¹, it must without delay so notify that licensing authority²².

1 For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

2 For the meaning of 'railway undertaking' see PARA 93 note 1 ante.

3 All the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 8 apply to a railway undertaking to which a European licence has been granted by the Office of Rail Regulation: reg 8(1). This is subject to reg 8(5) (licences granted by a licensing authority other than the Office of Rail Regulation: see the text and notes 20-22 infra): see reg 8(1). For the meaning of 'European licence' see PARA 93 note 3 ante; and see note 20 infra.

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 generally see PARA 93 note 1 ante.

4 I.e. a requirement referred to in *ibid* reg 6(14), Sch 2 (as to which see PARA 95 ante): see reg 8(2).

5 See the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 8(1), (2). As to the application and scope of these provisions see note 3 supra.

6 *Ibid* reg 8(3). As to the application and scope of this provision see note 3 supra.

7 *Ibid* reg 8(4)(a). As to the application and scope of this provision see note 3 supra.

8 I.e. under the Railways Act 1993 s 60 (as amended) (as to which see PARA 188 post): see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 8(4)(b).

9 *Ibid* reg 8(4)(b). As to the application and scope of this provision see note 3 supra.

10 *Ibid* reg 8(4). As to the application and scope of this provision see note 3 supra.

11 I.e. the requirements of financial fitness specified in *ibid* Sch 2 (as to which see PARA 95 ante): see reg 8(6).

12 *Ibid* reg 8(6). A temporary European licence under reg 8(6) must not be granted: (1) where the Office of Rail Regulation considers that safety would be jeopardised (reg 8(7)(a)); or (2) for a period exceeding six months (reg 8(7)(b)). As to the application and scope of these provisions see note 3 supra.

13 I.e. subject to *ibid* reg 8(9) (as to which see notes 14 infra): see reg 8(8).

14 *Ibid* reg 8(8). When making an application for a European licence, or where the Office of Rail Regulation has required a railway undertaking to resubmit its European licence in pursuance of reg 8(8) on the grounds that the railway undertaking has not commenced such operations, the railway undertaking is entitled to request that a period longer than six months be granted in which it can commence operations, taking into account the specific nature of the services to be provided: reg 8(9). As to the application and scope of these provisions see note 3 supra.

15 *Ibid* reg 8(10). As to the application and scope of this provision see note 3 supra.

16 *Ibid* reg 8(11). The text refers to a change affecting the legal situation of a railway undertaking referred to in reg 8(10) (as to which see the text and note 15 supra): see reg 8(11). As to the application and scope of this provision see note 3 supra.

17 *Ibid* reg 8(12). As to the application and scope of this provision see note 3 supra.

18 *Ibid* reg 8(13). As to the application and scope of this provision see note 3 supra.

19 *Ibid* reg 8(14). As to the application and scope of this provision see note 3 supra.

20 For these purposes, 'licensing authority' means the body charged by a Member State with the issue of licences: Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) art 2(c); definition applied by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 2(2). For the purposes of reg 8(5), 'European licence' means a licence granted pursuant to any action taken by an EEA state for the purposes of implementing Council Directive 95/18/EC (OJ L143, 27.06.1995, p 70): Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 8(5). For the meaning of 'EEA state' see PARA 93 note 1 ante.

21 le Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L75, 15.03.2001, p 26); and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)) (as to which see PARA 30 et seq ante).

22 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 8(5). As to the application and scope of this provision see note 3 supra.

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(B) STATEMENTS OF NATIONAL REGULATORY PROVISIONS (SNRP)

98. Prohibition on operating trains without Statement of National Regulatory Provisions.

Where a person is a railway undertaking¹, that person may not provide train services² in Great Britain³ unless⁴ that person holds a valid Statement of National Regulatory Provisions ('SNRP')⁵.

Any person who provides such a service without holding such a statement is guilty of an offence⁶.

1 I.e. where a person is a railway undertaking to which the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, apply: see reg 9(1). For the meaning of 'railway undertaking' see PARA 93 note 1 ante. As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 generally see PARA 93 note 1 ante.

2 For the meaning of 'train service' see PARA 93 note 1 ante.

3 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

4 I.e. in addition to being authorised to do so by a European licence: see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 9(1). In regs 9-11 (see also PARAS 99, 100 post), the expression 'European licence' includes a licence granted pursuant to any action taken by an EEA state for the purpose of implementing Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L75, 15.03.2001, p 26); and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)) (as to which see PARA 30 et seq ante); Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 9(5). For the meaning of 'EEA state' see PARA 93 note 1 ante. As to the requirement for authorisation by European licence see PARA 93 ante.

5 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 9(1). For these purposes, 'SNRP' means a Statement of National Regulatory Provisions, issued pursuant to reg 10 (as to which see PARA 99 post): reg 2(1). As to applications for SNRPs see PARA 99 post.

The following provisions are applied in relation to SNRPs and SNRP holders, in whole or in part and subject to certain modifications: (1) the Insolvency Act 1986 s 27 (as amended) (protection of interests of creditors and members) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 209-211), as applied by the Railways Act 1993 s 59, Sch 6 Pt 1 para 10 (as amended) (railway administration orders: see PARA 187 post); (2) the Railways Act 1993 ss 13-16 (as amended) (references to the Competition Commission regarding modification of licences) (see PARA 88 et seq ante); (3) s 22C (as added and amended) (directions requiring amendments to access agreement permitting more extensive use: see PARA 105 post); (4) ss 55-58 (as amended) (enforcement of licence conditions) (see PARA 179 et seq post); (5) s 68 (as amended) (investigatory functions of the Office of Rail Regulation: see PARA 54 ante); (6) s 72(1)-(4), (7)-(8), (11) (as amended) (keeping of register by the Office of Rail Regulation: see PARA 56 ante); (7) the Enterprise Act 2002 s 168 (as amended) (adverse effects on competition) (see COMPETITION vol 18 (2009) PARA 308); and (8) the Railways Act 2005 ss 1, 59(2)-(5), Sch 1 para 24(2) (transitional, etc): see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3.

The following provisions are applied in relation to holders of European licences and to SNRPs, subject to certain modifications: the Railways Act 1993 s 76(5) (as amended) (general duties of the Rail Passengers' Council) (see PARA 72 ante); and the Greater London Authority Act 1999 s 252C(3) (as added) (duties of the London Transport Users' Committee) (see PARA 48 ante): see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, regs 17(1), 19(1). For these purposes, the expression 'European licence' includes a licence granted pursuant to any action taken by an EEA state for the purpose of implementing Council Directive 95/18/EC (OJ

L143, 27.06.1995, p 70) (as amended) (see PARA 30 et seq ante): see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, regs 17(2), 19(2).

For train operators required to hold European licences granted by the Office of Rail Regulation (or by other European regulators) the conditions set out in a Statement of National Regulatory Provisions (SNRP) are equivalent to the conditions attached to licences granted under the Railways Act 1993 regime: see PARA 84 et seq ante.

6 See the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 9(2); and PARA 369 post.

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99. Application for Statement of National Regulatory Provisions.

Upon an application being made, the Office of Rail Regulation¹ must issue a Statement of National Regulatory Provisions (SNRP)² to a holder of a valid European licence³ who desires to provide train services⁴ in Great Britain⁵.

Any application for such a statement:

- 350 (1) must be made to the Office of Rail Regulation and in such form and manner as the Office of Rail Regulation may from time to time determine and publish⁶; and
- 351 (2) must be accompanied by a copy of the European licence, if already held⁷.

A SNRP continues in force for such period as may be specified in or determined by or under the SNRP⁸.

1 For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

2 For the meaning of 'SNRP' see PARA 98 note 5 ante.

3 For the meaning of 'European licence' for these purposes see PARA 98 note 4 ante. As to the validity of European licences see PARA 96 ante.

4 For the meaning of 'train service' see PARA 93 note 1 ante.

5 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 10(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante. As to the conditions that may be included in a Statement of National Regulatory Provisions see PARA 100 post.

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 generally see PARA 93 note 1 ante.

6 Ibid reg 10(2)(a). There is no further provision as to the procedure for applications under reg 10; cf reg 6(2) (cited in PARA 94 ante). However, at the date at which this volume is published, further guidance on the application process is published on the Office of Rail Regulation website (<http://www.rail-reg.gov.uk>): see *Railway Licensing: Guidance for Applicants* (March 2006) PARAS 2.31-2.36.

7 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 10(2)(b).

8 Ibid reg 10(3).

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100. Conditions of Statement of National Regulatory Provisions.

A statement of national regulatory provisions (SNRP)¹ must include one or more conditions², whether or not relating to the activities for which the applicant for the SNRP requires a European licence³, as appear to the Office of Rail Regulation⁴ to be requisite or expedient having regard to its general duties⁵. Conditions included in a SNRP⁶ may impose any of the following requirements:

- 352 (1) specific technical and operational requirements for rail services⁷;
- 353 (2) safety requirements applying to staff, rolling stock and the internal organisation of the undertaking⁸;
- 354 (3) provisions on health, safety, social conditions and the rights of workers and consumers⁹;
- 355 (4) requirements applying to all undertakings in the relevant railway sector designed to offer benefits or protection to consumers¹⁰.

However, a condition may not: (a) impose any requirement which is incompatible with Community law¹¹; or (b) be applied in a discriminatory manner¹²; and a railway undertaking may at any time refer to the European Commission the question of whether a condition included in a SNRP contravenes either of the prohibitions under head (a) or head (b) above¹³.

A SNRP may include conditions¹⁴ requiring the rendering to the Office of Rail Regulation of a payment on the grant of the SNRP or payments during the currency of the SNRP, or both, of such amount or amounts as may be determined by or under the SNRP¹⁵.

1 For the meaning of 'SNRP' see PARA 98 note 5 ante.

2 Ie subject to the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 11(4) (as to which see the text and notes 11-12 infra): see reg 11(1).

3 For the meaning of 'European licence' for these purposes see PARA 98 note 4 ante. As to applications for SNRPs see PARA 99 ante.

4 For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

5 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 11(1). The text refers to the duties imposed on the Office of Rail Regulation by the Railways Act 1993 s 4 (as amended) (as to which see PARA 33 ante): see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 11(1). In this context, the references in the Railways Act 1993 s 4 (as amended) to the functions assigned or transferred to the Office of Rail Regulation under or by virtue of the Railways Act 1993 Pt I (ss 4-83) (as amended) (see PARA 35 et seq ante) have effect as if they were references to the functions conferred on the Office of Rail Regulation under or by virtue of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Pt 3 (regs 9-14) (see PARAS 98 et seq ante, 101 et seq post): reg 11(1).

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 generally see PARA 93 note 1 ante.

6 Ie by virtue of ibid reg 11(1) (see the text and notes 1-5 supra) and without prejudice to the generality of reg 11(1): see reg 11(3).

7 Ibid reg 11(3)(a).

8 Ibid reg 11(3)(b). For the meaning of 'railway undertaking' see PARA 93 note 1 ante.

9 Ibid reg 11(3)(c).

10 Ibid reg 11(3)(d).

11 Ibid reg 11(4)(a).

12 Ibid reg 11(4)(b).

13 See ibid reg 12(1). Where a railway undertaking refers a question as described in reg 12(1) to the European Commission, and the European Commission delivers an opinion that a requirement imposed through a condition in a SNRP is incompatible with Community law or has been applied in a discriminatory manner, the Office of Rail Regulation must review the condition: reg 12(2).

14 See note 2 supra.

15 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 11(2). Any sums received by the Office of Rail Regulation in consequence of the provisions of any condition of a SNRP must be paid into the Consolidated Fund: reg 11(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

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101. Modification of Statement of National Regulatory Provisions by consent.

The Office of Rail Regulation¹ may² modify the conditions of a Statement of National Regulatory Provisions (SNRP)³, if the SNRP holder consents to the modifications⁴. However, before making such modifications, the Office of Rail Regulation must give notice⁵:

- 356 (1) stating that it proposes to make the modifications and setting out their effect⁶;
- 357 (2) stating the reasons why it proposes to make the modifications⁷; and
- 358 (3) specifying the period, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made⁸.

Before making the modifications, the Office of Rail Regulation must consider any representations or objections which are duly made and not withdrawn⁹.

1 For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

2 Ie subject to the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 11 (as to which see PARA 100 ante) and reg 13(2)-(3) (as to which see the text and notes 5-9 infra): see reg 13(1).

3 For the meaning of 'SNRP' see PARA 98 note 5 ante. As to the conditions that may be included in a SNRP see PARA 100 ante.

4 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 13(1).

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 93 note 1 ante.

5 Ibid reg 13(2). A notice under reg 13(2) must be given: (1) by publishing the notice in such manner as the Office of Rail Regulation considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications (reg 13(3)(a)); and (2) by serving a copy of the notice on the SNRP holder (reg 13(3)(b)).

6 Ibid reg 13(2)(a).

7 Ibid reg 13(2)(b).

8 Ibid reg 13(2)(c).

9 Ibid reg 13(2).

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(iii) Access

A. ACCESS REGIME UNDER THE RAILWAYS ACT 1993

102. Access contracts requiring the approval of the Office of Rail Regulation.

A facility owner¹ must not enter into an access contract² unless:

- 359 (1) he does so pursuant to directions given by the Office of Rail Regulation³;
- 360 (2) the Office of Rail Regulation has approved⁴ the terms of the access contract and the facility owner enters into the contract pursuant to directions to the facility owner⁵; or
- 361 (3) the access contract is of a class or description⁶ specified in a general approval given by the Office of Rail Regulation⁷;

and any access contract⁸ is void unless one of the conditions in heads (1) to (3) above is satisfied⁹. The access contracts which require either direction or approval given by the Office of Rail Regulation in this way¹⁰ are those under which the beneficiary¹¹ obtains, or, in the case of an access contract conferring an access option, may obtain (whether for himself alone or for himself and associates¹² of his)¹³:

- 362 (a) from a facility owner whose railway facility is track, permission to use that track for the purpose of the operation of trains¹⁴ on that track by the beneficiary¹⁵;
- 363 (b) from a facility owner whose railway facility is a station, permission to use that station, for or in connection with the operation of trains by the beneficiary¹⁶;
- 364 (c) from a facility owner whose railway facility is a light maintenance depot, permission to use that light maintenance depot for the purpose of obtaining light maintenance services¹⁷ for or in connection with the operation of trains by the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another¹⁸;
- 365 (d) from any facility owner, permission to use the facility owner's railway facility for the purpose of stabling, or otherwise temporarily holding, rolling stock in connection with the operation of trains on any track by the beneficiary¹⁹; or
- 366 (e) from any facility owner, permission to use the facility owner's railway facility for or in connection with the operation of a network²⁰, station or light maintenance depot by the beneficiary²¹.

In any case where a facility owner and another person (the 'other party') have agreed the terms on which they propose to enter into an access contract which requires either direction or approval given by the Office of Rail Regulation²², but the circumstances are such that, by virtue of head (2) above, those terms must be approved, and directions must be given, by the Office of Rail Regulation before the facility owner may enter into the proposed access contract²³, it is for the facility owner to submit the proposed access contract to the Office of Rail Regulation for approval of its terms²⁴. If, on the submission of such a proposed access contract²⁵, the Office of Rail Regulation approves its terms, it must issue directions to the facility owner²⁶ requiring him to enter into the proposed access contract within such period as may be specified for the

purpose in the directions²⁷, but releasing him from his duty to do so if the other party fails to enter into the proposed access contract within such period as may be specified for the purpose in the directions²⁸; and the Office of Rail Regulation must send a copy of the directions to the other party²⁹. The grounds on which the Office of Rail Regulation may reject, or approve subject to modifications³⁰, a proposed access contract so submitted to it³¹ include that it considers that the use of the facility for which it provides might impede the provision of services either under a franchise agreement³² or under an agreement entered into by the Secretary of State pursuant to his duty to secure services in the absence of a franchise³³.

If, on the submission of such a proposed access contract³⁴, the Office of Rail Regulation does not consider it appropriate to approve its terms without modification (or to reject it), it may, after consultation with the facility owner and the other party, issue directions to the facility owner³⁵:

- 367 (i) approving the terms of the proposed access contract, but subject to such modifications as may be specified in the directions³⁶; and
- 368 (ii) requiring the facility owner to enter into the proposed access contract on those terms, as so modified³⁷; but
- 369 (iii) releasing him from his duty to do so if either³⁸: (A) the facility owner gives the Office of Rail Regulation notice³⁹ of objection before the expiration of the period of 14 days beginning with the day after that on which the directions are issued⁴⁰; or (B) the other party fails to enter into the proposed access contract, on the terms as so modified⁴¹, before the date specified for the purpose in the directions⁴²;

and the Office of Rail Regulation must send a copy of the directions to the other party⁴³.

The Office of Rail Regulation may prepare and publish model clauses for inclusion in access contracts⁴⁴; and that Office must encourage, and may require, the use of any of its model clauses in access contracts wherever it considers it appropriate⁴⁵.

1 For these purposes, 'facility owner' means any person who has an estate or interest in, or right over, a railway facility and whose permission to use that railway facility is needed by another before that other may use it: Railways Act 1993 s 17(6). 'Facility owner' also includes a person before he becomes a facility owner; and any reference to a facility owner's railway facility is a reference to the railway facility by reference to which he is a facility owner: s 17(6) (definition amended by the Transport Act 2000 s 233(1)). For the purposes of the Railways Act 1993 Pt I (ss 4-83) (as amended) (the provision of railway services: see PARA 33 et seq ante), 'facility owner' has the meaning given by s 17(6) (as amended); and 'railway facility' means any track, station or light maintenance depot: s 83(1). As to the meaning, for these purposes, of references to a railway facility also see s 17(9) (see PARA 103 note 3 post); applied by s 18(9) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 22). For the purposes of the Railways Act 1993 ss 17-22C, Sch 4 (as amended), references to a railway facility (including references to any track, station or light maintenance depot) include references to a railway facility (or any track, station or light maintenance depot) which is proposed to be constructed or is in the course of construction: s 83(1A) (added by the Transport Act 2000 s 233(3)). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; for the meaning of 'station' see PARA 82 note 5 ante; and for the meaning of 'track' see PARA 82 note 8 ante.

2 Ie an access contract to which the Railways Act 1993 s 18 (as amended) applies (see the text and notes 10-21 infra): see s 18(1). For these purposes, 'access contract' means: (1) a contract under which: (a) a person (whether or not the applicant); and (b) so far as may be appropriate, any associate of that person, obtains permission from a facility owner to use the facility owner's railway facility; or (2) a contract conferring an option, whether exercisable by the applicant or some other person, to require a facility owner to secure that: (a) a person (whether or not the applicant or that other), and (b) so far as may be appropriate, any associate of that person, obtains permission from the facility owner to use his railway facility; and any reference to an 'access option' is a reference to an option falling within head (2) supra: ss 17(6), 83(1). As to model clauses published by the Office of Rail Regulation for inclusion in access contracts see the text and notes 44-45 infra. As to access contracts see further the Railways Act 1993 s 17 (as amended) (directions from the Office of Rail Regulation to enter into an access contract: see PARA 103 post); s 19 (as amended) (directions from the Office of Rail Regulation to enter into an installation access contract: see PARA 104 post); s 20 (as amended) (exemptions: see PARA 108 post); s 22 (as amended) (amendment of access agreements: see PARA 106 post); and s 22A (as added

and amended) (directions to require more extensive use: see PARA 105 post). As to access and transit rights granted to railway undertakings established in EEA states see PARA 109 et seq post.

The provisions of s 18 (as amended) do not apply to an access contract if and to the extent that the railway facility to which the access contract relates is, by virtue of s 20 (as amended) (see PARA 108 post), an exempt facility: s 18(3) (amended by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 2(4), Sch 1 Pt 1 para 4(c)(i)). For the meaning of 'exempt facility' see PARA 108 note 9 post. Nor do provisions of the Railways Act 1993 s 18 (as amended) prevent a facility owner from granting a lease of any land which consists of or includes the whole or any part of his railway facility: s 18(10). For these purposes, 'lease' includes an underlease or sublease and an agreement for a lease, underlease or sublease: s 17(7); definition applied by s 18(8) (amended by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 1 Pt 1 para 4(c)(ii)). The Railways Act 1993 s 18 (as amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

Where it considers that to do so is best calculated to meet any need relating to transport in or around, or to or from, Greater London, Transport for London may enter into an access contract to which the Railways Act 1993 s 18 (as amended) applies, notwithstanding (Greater London Authority Act 1999 s 200(1)): (i) that such a contract can only be entered into on terms approved (with or without modification) by the Office of Rail Regulation and pursuant to directions given by the Office of Rail Regulation under the Railways Act 1993 s 18 (as amended) (Greater London Authority Act 1999 s 200(1)(a) (s 200(1), (2) amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 2 para 19(q))), and (ii) that the terms of the contract may confer on the Office of Rail Regulation powers to determine the manner in which Transport for London is to exercise its functions in relation to the contract (Greater London Authority Act 1999 s 200(1)(b) (as so amended)). The duty imposed on the Mayor of London by s 174 (structure of fares and services: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 303) accordingly also has effect subject, as respects the power conferred on Transport for London by s 200(1) (as amended), to the powers of the Office of Rail Regulation under the Railways Act 1993 s 18 (as amended): Greater London Authority Act 1999 s 200(2) (as so amended)). As to Transport for London see PARA 66 et seq ante. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the duty of the Office of Rail Regulation to have regard to the ability of the Mayor of London and Transport for London to carry out the functions conferred or imposed on them see PARA 33 ante. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

3 Railways Act 1993 s 18(1)(a) (amended by the Transport Act 2000 s 274, Sch 31 Pt IV). The text refers to directions under the Railways Act 1993 s 17 (as amended) (see PARA 103 post): see s 18(1)(a) (as amended). As to directions given under the Railways Act 1993 generally see s 144 (as amended); and PARA 29 note 13 ante. The Office of Rail Regulation has general duties imposed on it by *ibid* s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended) (the provision of railway services): see PARA 33 et seq ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of access contracts and related matters see PARA 56 ante.

4 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

The Office of Rail Regulation has published criteria and procedures for the approval of both passenger and freight track access contracts: see *Criteria and procedures for the approval of freight track access contracts* (3rd edition, May 2006) and *Criteria and procedures for the approval of passenger track access contracts* (4th edition, May 2006), which, at the date at which this volume states the law, are available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

5 Railways Act 1993 s 18(1)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

6 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

7 Railways Act 1993 s 18(1)(c) (added by the Transport Act 2000 s 230(1); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Where the Office of Rail Regulation gives or revokes a general approval under the Railways Act 1993 s 18(1)(c) (as added and amended), it must publish the approval or revocation in such manner as it considers appropriate: s 18(7A) (s 18(7A), (7B) added by the Transport Act 2000 s 230(2); the Railways Act 1993 s 18(7A) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). The revocation of a general approval given under the Railways Act 1993 s 18(1)(c) (as added and amended) must not affect the continuing validity of any access contract to which it applied: s 18(7B) (as so added).

8 See note 2 *supra*.

9 Railways Act 1993 s 18(1) (amended by the Transport Act 2000 s 230(1)).

10 See note 2 *supra*.

11 For these purposes, 'beneficiary' means the person mentioned in note 2 head (1)(a) supra or, as the case may be, note 2 head (2)(a) supra (definition of 'access contract') according to the description of access contract in question: the Railways Act 1993 s 17(7); definition applied by s 18(8) (as amended: see note 2 supra).

12 For these purposes, 'associate', in relation to any person, includes: (1) any servant, agent or independent contractor of his; (2) any passenger of his; (3) any person engaged in the provision of goods or services to or for him; and (4) any other person who deals or has business with him: *ibid* s 17(7); definition applied by s 18(8) (as amended: see note 2 supra). As to the meaning of 'goods' see PARA 82 note 3 ante.

13 *Ibid* s 18(2). The provisions of s 18(2) are subject to s 18(3) (as amended) (see note 2 supra) and s 18(4) (as amended) (see the text and notes 15-21 *infra*): see s 18(2).

14 For the meaning of 'train' see PARA 82 note 2 ante.

15 Railways Act 1993 s 18(2)(a). The provisions of s 18(2)(a) do not extend to permission to use track for the purpose of providing network services on that track: s 18(4)(a). As to the meaning, for these purposes, of references to obtaining permission to use a railway facility see s 17(7A) (as added) and s 17(8)(a), (b) (see PARA 103 post); applied by s 18(9) (as amended: see note 1 supra). For the meaning of 'network services' see PARA 82 ante.

Framework agreements made under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 18 may comprise an access contract described in the Railways Act 1993 s 18(2)(a) which satisfies one of the conditions in s 18(1) (as amended) (see the text and notes 1-9 supra): see PARA 120 note 3 post.

16 *Ibid* s 18(2)(b). The provisions of s 18(2)(b) do not extend to permission to use a station for the purpose of operating that station: s 18(4)(b).

17 For the meaning of 'light maintenance services' see PARA 82 note 4 ante.

18 Railways Act 1993 s 18(2)(c). The provisions of s 18(2)(c) do not extend to permission to use a light maintenance depot for the purpose of enabling the beneficiary to carry out light maintenance: s 18(4)(c). For these purposes, 'light maintenance' (without more) means: (1) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock; or (2) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of 12 months or less to prepare the locomotives or other rolling stock for service; and, for the purposes of head (2) supra, 'maintenance work' includes the detection and rectification of any faults: s 83(1). As to the meaning, for these purposes, of references to obtaining permission to use a light maintenance depot see the words in s 17(8) (see PARA 103 post) which apply to s 18(2)(c) as they apply to s 17(2)(c): see s 17(9); applied by s 18(9) (as amended: see note 1 supra). For the meanings of 'locomotive' and 'rolling stock' see PARA 82 note 2 ante.

19 *Ibid* s 18(2)(d).

20 For the meaning of 'network' see PARA 82 ante. For the purposes of *ibid* ss 17-22C, Sch 4 (as amended), references to a network include references to a network which is proposed to be constructed or is in the course of construction: s 83(1A) (as added: see note 1 supra).

21 *Ibid* s 18(2)(e). If and to the extent that the railway facility mentioned in s 18(2)(e) is track, that provision does not extend to obtaining permission to use that track for the purpose: (1) of providing network services on that track (s 18(4)(d)(i)); or (2) of operating any network in which that track is comprised (s 18(4)(d)(ii)), unless the purpose of entering into the access contract is to enable the beneficiary to operate on behalf of the Secretary of State a network in which the track in question is comprised (s 18(4)(d) (s 18(4)(d)-(f) amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 12(1))). If and to the extent that the railway facility mentioned in the Railways Act 1993 s 18(2)(e) is a station, that provision does not extend to obtaining permission to use that station for the purpose: (a) of providing station services at that station (s 18(4)(e)(i)); or (b) of operating that station (s 18(4)(e)(ii)), unless the purpose of entering into the access contract is to enable the beneficiary to operate the station on behalf of the Secretary of State (s 18(4)(e) (as so amended)). For the meaning of 'station services' see PARA 82 note 5 ante. If and to the extent that the railway facility mentioned in s 18(2)(e) is a light maintenance depot, that provision does not extend to obtaining permission to use that light maintenance depot for the purpose: (i) of carrying out light maintenance at that light maintenance depot (s 18(4)(f)(i)); or (ii) of operating that light maintenance depot (s 18(4)(f)(ii)), unless the purpose of entering into the access contract is to enable the beneficiary to operate the light maintenance depot on behalf of the Secretary of State (s 18(4)(f) (as so amended)). As to the meaning, for these purposes, of references to a person operating a network, station or light maintenance depot 'on behalf of the Secretary of State' see s 17(4) (as amended) (see PARA 103 post); applied by s 18(9) (as amended: see note 1 supra). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (as amended), see s 4 (as amended); and PARA 33 ante. As to the power of the Secretary of State to exercise his functions under s 18 (as amended) for the purpose of encouraging railway investment or for purposes which include that purpose see PARA 36 ante.

22 Ibid s 18(5)(a). The text refers to an access contract to which s 18 (as amended) applies (see the text and notes 10-21 supra): see s 18(5)(a). As to the application of s 18(5)-(7) (as amended) (see the text and notes 23-43 infra) with modifications in relation to installation access contracts to which s 19(3) (as amended) applies (see PARA 104 post) see s 19(5); and PARA 104 post.

23 Ibid s 18(5)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

24 Railways Act 1993 s 18(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

25 Ie pursuant to the Railways Act 1993 s 18(5) (as amended) (see the text and notes 22-24 supra): see s 18(6) (as amended: see note 26 infra).

26 Ibid s 18(6) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

27 Railways Act 1993 s 18(6)(a).

28 Ibid s 18(6)(b).

29 Ibid s 18(6) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the service of documents under the Railways Act 1993 see PARA 34 note 13 ante.

30 As to the meaning of 'modification' see PARA 33 note 46 ante.

31 Ie pursuant to the Railways Act 1993 s 18(5) (as amended) (see the text and notes 22-24 supra): see s 18(6A) (as added and amended: see note 33 infra).

32 For the meaning of 'franchise agreement' see PARA 130 note 4 post.

33 Railways Act 1993 s 18(6A) (added by the Transport Act 2000 s 212(6); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 12(1), (3)). The text refers to the Secretary of State's duty under the Railways Act 1993 s 30 (as substituted and amended) (see PARA 138 post): s 18(6A) (as so added and amended).

34 Ie pursuant to ibid s 18(5) (as amended) (see the text and notes 22-24 supra): see s 18(7) (as amended: see note 35 infra).

35 Ibid s 18(7) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

36 Railways Act 1993 s 18(7)(a).

37 Ibid s 18(7)(b).

38 Ibid s 18(7)(c).

39 For the meaning of 'notice' see PARA 34 note 4 ante.

40 Railways Act 1993 s 18(7)(c)(i) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

41 Ie modified under the Railways Act 1993 s 18(7) (as amended): see s 18(7)(c)(ii).

42 Ibid s 18(7)(c)(ii).

43 Ibid s 18(7) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

44 Railways Act 1993 s 21(1) (s 21(1), (3) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Different model clauses may be prepared and published in relation to different classes or descriptions of railway facility (Railways Act 1993 s 21(2)); and the Office of Rail Regulation may from time to time revise any model clauses published under s 21 (as amended) and may publish those clauses as so revised (s 21(3) (as so amended)). In preparing or revising any model clauses under s 21 (as amended), the Office of Rail Regulation may consult such persons as it thinks fit: s 21(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). The Railways Act 1993 s 21 (as amended) binds the Crown: s 150(1)(a) (as amended: see note 2 supra).

The Office of Rail Regulation has published model clauses for a track access contract (freight services) and a track access contract (passenger services), which, at the date at which this volume states the law, are available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). One of those model clauses incorporates

by reference into each type of contract the Network Code (17 October 2007) (formerly the Railtrack Track Access Conditions), which, accordingly, forms part of each bilateral access contract between Network Rail and a holder of access rights. The Network Code deals with the following matters: General Provisions (Part A); Performance Monitoring (Part B); Modifications (Part C); Timetable Change (Part D); Environmental Protection (Part E); Vehicle Change (Part F); Network Change (Part G); Operational Disruption (Part H); Changes to Access Rights (Part J); Information (Part K); Performance (Part L); Appeals (Part M); and Access Dispute Resolution Rules (Annex). At the date at which this volume states the law, the Network Code is available on the Network Rail website (<http://www.networkrail.co.uk>).

45 Railways Act 1993 s 21(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b), 10(a), (b)).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(iii) Access/A. ACCESS REGIME UNDER THE RAILWAYS ACT 1993/103. Directions from the Office of Rail Regulation to enter into an access contract.

103. Directions from the Office of Rail Regulation to enter into an access contract.

The Office of Rail Regulation¹ may, on the application of any person², give directions³ to a facility owner⁴ requiring him to enter into an access contract⁵ with the applicant⁶ for the purpose of enabling a beneficiary⁷ to obtain access to a railway facility⁸; but no such directions may be given if and to the extent that:

- 370 (1) the facility owner's railway facility is⁹ an exempt facility¹⁰;
- 371 (2) performance of the access contract, if entered into, would necessarily involve the facility owner in being in breach of an access agreement¹¹; or
- 372 (3) as a result of an obligation or duty owed by the facility owner which arose before 2 April 1994¹², the consent¹³ of some other person is required by the facility owner before he may enter into the access contract¹⁴.

The purpose for which directions may be given is that of enabling the beneficiary to obtain (whether for himself alone or for himself and, so far as may be applicable, associates¹⁵ of his)¹⁶:

- 373 (a) from a facility owner whose railway facility is track¹⁷, permission¹⁸ to use that track for the purpose of the operation of trains¹⁹ on that track by the beneficiary²⁰;
- 374 (b) from a facility owner whose railway facility is a station, permission to use that station for or in connection with the operation of trains by the beneficiary²¹;
- 375 (c) from a facility owner whose railway facility is a light maintenance depot, permission to use that light maintenance depot for the purpose of obtaining light maintenance services²² for or in connection with the operation of trains by the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another²³;
- 376 (d) from any facility owner, permission to use the facility owner's railway facility for the purpose of stabling, or otherwise temporarily holding, rolling stock²⁴ in connection with the operation of trains on any track by the beneficiary²⁵; or
- 377 (e) from any facility owner, permission to use the facility owner's railway facility for or in connection with the operation of a network²⁶, station or light maintenance depot by the beneficiary²⁷.

1 As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties imposed on that Office by the Railways Act 1993 s 4 (as amended), ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended) (the provision of railway services), see PARA 33 et seq ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of access contracts and related matters see PARA 56 ante.

2 As to the applications referred to in the text see PARA 107 post.

3 Nothing in the Railways Act 1993 s 17 (as amended) authorises the Office of Rail Regulation to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility: s 17(5) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). 'Directions' means directions under the Railways Act 1993 s 17 (as amended): s 17(7). As to directions given under the Railways Act 1993 generally see s 144 (as amended); and PARA 29 note 13 ante. As to the meaning of 'lease' for these purposes see PARA 102 note 2 ante.

Any reference in s 17 (as amended) to a railway facility includes a reference to a part of a railway facility: s 17(9). For the purposes of the Railways Act 1993 ss 17-22C, Sch 4 (as amended), references to a railway facility (including references to any track, station or light maintenance depot) include references to a railway facility (or any track, station or light maintenance depot) which is proposed to be constructed or is in the course of construction: s 83(1A) (added by the Transport Act 2000 s 233(3)). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; for the meaning of 'railway facility' generally see PARA 102 note 1 ante; for the meaning of 'station' see PARA 82 note 5 ante; and for the meaning of 'track' see PARA 82 note 8 ante.

The Railways Act 1993 s 17 (as amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (2)).

4 For the meaning of 'facility owner' see PARA 102 note 1 ante.

5 For the meaning of 'access contract' see PARA 102 note 2 ante. As to access contracts see further the Railways Act 1993 s 18 (as amended) (contracts requiring approval or direction from the Office of Rail Regulation: see PARA 102 ante); s 19 (as amended) (directions from the Office of Rail Regulation to enter into an installation access contract: see PARA 104 post); s 20 (as amended) (exemptions: see PARA 108 post); s 21 (as amended) (model clauses for access contracts: see PARA 102 ante); s 22 (as amended) (amendment of access agreements: see PARA 106 post); s 22A (as added and amended) (directions to require more extensive use: see PARA 105 post).

6 For these purposes, 'applicant' means the person making the application for directions: *ibid* s 17(7).

7 For the meaning of 'beneficiary' see PARA 102 note 11 ante.

8 Railways Act 1993 s 17(1) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). The text refers to the purpose specified in the Railways Act 1993 s 17(2) (see the text and notes 15-27 *infra*): see s 17(1) (as so amended). In *Re Railtrack plc (in railway administration), Winsor v Bloom* [2002] EWCA Civ 955, [2002] 4 All ER 435, [2002] 1 WLR 3002, the Court of Appeal held that the regulator, having regard to its role as guardian of the public interest, is not constrained in the directions it may make by the wishes of the parties and that, accordingly, the directions it gives may be different from those which an applicant for the directions sought. Because the regulator is not a judge or arbitrator but performs a broader role than that required of a judicial or quasi judicial decision maker, it may have a separate agenda; and, because the regulator is better placed than a court to make an overall assessment of what is in the interest of the rail network, the court has limited scope for intervention: see *Re Railtrack plc (in railway administration), Winsor v Bloom* *supra* at [21], [33]-[34]. See also *R (on the application of London and Continental Stations and Property Ltd) v Rail Regulator* [2003] EWHC 2607 (Admin), [2003] All ER (D) 88 (Nov) (direction pursuant to the Railways Act 1993 s 17 (as amended), which required the claimant to enter into a station access contract with a train operating company containing provisions for calculating compensation arising from disturbance to that company's access to a mainline station during construction work, struck a fair balance between the claimant's property rights and the public interest).

As to access and transit rights which may be granted to international groupings and freight operators to the entire network in Great Britain see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049; and PARA 109 *et seq* post.

9 *Ie* by virtue of the Railways Act 1993 s 20 (as amended) (see PARA 108 post): see s 17(1)(a).

10 *Ibid* s 17(1)(a). For the meaning of 'exempt facility' see PARA 108 note 9 post.

11 *Ibid* s 17(1)(b) (amended by the Railways Regulations 1998, SI 1998/1340, reg 21(5); and the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 2(4), Sch 1 Pt 1 para 4(a)(i), (b)). For the meaning of 'access agreement' see PARA 105 note 2 post.

12 *Ie* before the coming into force of the Railways Act 1993 s 17 (see the Railways Act 1993 (Commencement No 4 and Transitional Provisions) Order 1994, SI 1994/571): see the Railways Act 1993 s 17(1) (c) (as amended: see note 14 *infra*).

13 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

14 *Ibid* s 17(1)(c) (amended by the Railways Regulations 1998, SI 1998/1340, reg 21(5); and the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 1 Pt 1 para 4(a)(ii)).

15 For the meaning of 'associate' see PARA 102 note 12 ante.

16 Railways Act 1993 s 17(2). The provisions of s 17(2) are subject to the limitations imposed by s 17(3) (as amended) (see the text and notes 20-27 *infra*): see s 17(2).

17 Any reference in *ibid* s 17 (as amended) to obtaining permission to use a railway facility includes, where the facility is track, permission to connect other track to it: s 17(7A) (added by the Transport Act 2000 s 252, Sch 27 paras 17, 21).

18 Any reference in the Railways Act 1993 to obtaining permission to use a railway facility includes: (1) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that railway facility, whether the facility owner in question is to provide those services himself or to secure their provision by another (s 17(8)(a)); and (2) a reference to obtaining permission: (a) to enter upon the facility land, with or without vehicles (s 17(8)(b)(i)); (b) to bring things on to that land and keep them there (s 17(8)(b)(ii)); (c) to carry out works on that land (s 17(8)(b)(iii)); and (d) to use and maintain any things kept, or buildings or other works constructed, on that land (whether by the beneficiary or another) or any amenities situated on that land (s 17(8)(b)(iv)), 'facility land' meaning in head (2) *supra* the land which constitutes the railway facility in question (s 17(8)). 'Ancillary service' means any service which is necessary or expedient for giving full effect to any permission or right which a person may have to use any track, station or light maintenance depot: s 83(1). As to the meaning of 'vehicle' see PARA 82 note 2 *ante*.

19 For the meaning of 'train' see PARA 82 note 2 *ante*.

20 Railways Act 1993 s 17(2)(a). The provisions of s 17(2)(a) do not extend to obtaining permission to use track for the purpose of providing network services on that track: s 17(3)(a). For the meaning of 'network services' see PARA 82 *ante*.

21 *Ibid* s 17(2)(b). The provisions of s 17(2)(b) do not extend to obtaining permission to use a station for the purpose of operating that station: s 17(3)(b).

22 In *ibid* s 17(2)(c), the reference to obtaining permission to use a light maintenance depot includes a reference to obtaining power to obtain light maintenance services at that light maintenance depot, whether the facility owner is to provide those services himself or to secure their provision by another: s 17(8). For the meaning of 'light maintenance services' see PARA 82 note 4 *ante*.

23 *Ibid* s 17(2)(c). The provisions of s 17(2)(c) do not extend to obtaining permission to use a light maintenance depot for the purpose of enabling the beneficiary to carry out light maintenance: s 17(3)(c). For the meaning of 'light maintenance' (without more) see PARA 102 note 18 *ante*.

24 For the meaning of 'rolling stock' see PARA 82 note 2 *ante*.

25 Railways Act 1993 s 17(2)(d).

26 For the meaning of 'network' see PARA 82 note 8 *ante*. For the purposes of *ibid* ss 17-22C, Sch 4 (as amended), references to a network include references to a network which is proposed to be constructed or is in the course of construction: s 83(1A) (as added: see note 3 *supra*).

27 *Ibid* s 17(2)(e).

If and to the extent that the railway facility mentioned in s 17(2)(e) is track, that provision does not extend to obtaining permission to use that track for the purpose: (1) of providing network services on that track (s 17(3)(d)(i)); or (2) of operating any network in which that track is comprised (s 17(3)(d)(ii)), except where the purpose for which directions are sought is to enable the beneficiary to operate on behalf of the Secretary of State a network in which the track in question is comprised (s 17(3)(d) (s 17(3)(d)-(f) amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 12(1))).

If and to the extent that the railway facility mentioned in the Railways Act 1993 s 17(2)(e) is a station, that provision does not extend to obtaining permission to use that station for the purpose: (a) of providing station services at that station (s 17(3)(e)(i)); or (b) of operating that station (s 17(3)(e)(ii)), except where the purpose for which directions are sought is to enable the beneficiary to operate the station on behalf of the Secretary of State (s 17(3)(e) (as so amended)). For the meaning of 'station services' see PARA 82 note 5 *ante*.

If and to the extent that the railway facility mentioned in s 17(2)(e) is a light maintenance depot, that provision does not extend to obtaining permission to use that light maintenance depot for the purpose: (i) of carrying out light maintenance at that light maintenance depot (s 17(3)(f)(i)); or (ii) of operating that light maintenance depot (s 17(3)(f)(ii)), except where the purpose for which directions are sought is to enable the beneficiary to operate the light maintenance depot on behalf of the Secretary of State (s 17(3)(f) (as so amended)).

Any reference in s 17 (as amended) to a person operating a network, station or light maintenance depot 'on behalf of the Secretary of State' is a reference to his operating the network, station or light maintenance depot in pursuance of any agreement or other arrangements made by the Secretary of State for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of Pt I (as amended) (the provision of railway services: see PARA 33 *et seq ante*) or the Railways Act 2005 Pt 4 (ss 22-45) (network modifications etc) (see PARA 145 *et seq post*) to secure the operation of that network, station or light maintenance depot: Railways Act 1993 s 17(4) (amended by the Railways Act 2005 s 54(4), Sch 1 Pt 1 para

12(2), Sch 11 paras 1, 3(e)). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (as amended), see s 4 (as amended); and PARA 33 ante. As to the power of the Secretary of State to exercise his functions under s 17 (as amended) for the purpose of encouraging railway investment or for purposes which include that purpose see PARA 36 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(iii) Access/A. ACCESS REGIME UNDER THE RAILWAYS ACT 1993/104. Directions from the Office of Rail Regulation to enter into an installation access contract.

104. Directions from the Office of Rail Regulation to enter into an installation access contract.

The Office of Rail Regulation¹ may, on the application of any person, give directions² to an installation owner³ requiring him to enter into an installation access contract⁴ with the applicant⁵ for the purpose of enabling the beneficiary⁶ to obtain (whether for himself alone or for himself and, so far as may be applicable, associates of his) permission to use the installation owner's network installation⁷ for the purpose of operating, on behalf of the Secretary of State⁸, the network in which the network installation is comprised⁹. However, an installation owner must not enter into any such installation access contract¹⁰ unless:

- 378 (1) he does so pursuant to such directions¹¹;
- 379 (2) the Office of Rail Regulation has approved the terms of the installation access contract and the installation owner enters into the contract pursuant to directions given for the purpose¹²; or
- 380 (3) the installation access contract is of a class or description¹³ specified in a general approval given by the Office of Rail Regulation¹⁴;

and any installation access contract¹⁵ is void unless one of the conditions in heads (1) to (3) above is satisfied¹⁶, being installation access contracts¹⁷ under which the beneficiary obtains (whether for himself alone or for himself and associates of his) from an installation owner permission to use the installation owner's network installation for the purpose of operating, on behalf of the Secretary of State, the network in which the network installation is comprised¹⁸.

1 As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties imposed on that Office by the Railways Act 1993 s 4 (as amended), ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended) (the provision of railway services), see PARA 33 et seq ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of installation access contracts and related matters see PARA 56 ante.

2 The Railways Act 1993 s 17(10), Sch 4 (Sch 4 as amended) (as to which see PARA 107 post) has effect with respect to applications for directions under s 19(1) (as amended) as it has effect with respect to applications for directions under s 17 (as amended) (as to which see PARA 103 ante), but with the following modifications: (1) for any reference to an access contract, there is substituted a reference to an installation access contract (s 19(12)(a)); (2) any reference to an application for directions under s 17 (as amended) is taken as a reference to an application for directions under s 19(1) (as amended) (s 19(12)(b)); (3) for any reference to the facility owner, there is substituted a reference to the installation owner mentioned in s 19(1) (as amended) (s 19(12)(c)); (4) for any reference to s 17 (as amended), but not to any specific provision of s 17 (as amended), there is substituted a reference to s 19 (as amended) (s 19(12)(d)). For the meaning of 'installation access contract' see note 4 infra; and for the meaning of 'installation owner' see note 3 infra. For the meaning of 'access contract' see PARA 102 note 2 ante; and for the meaning of 'facility owner' see PARA 102 note 1 ante. As to directions given under the Railways Act 1993 generally see s 144 (as amended); and PARA 29 note 13 ante.

However, nothing in s 19 (as amended) either authorises the Office of Rail Regulation to give directions to an installation owner requiring him to grant a lease of the whole or any part of his network installation, or prevents an installation owner from granting a lease of any land which consists of or includes the whole or any part of his network installation: s 19(6) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). For these purposes, 'lease' includes an underlease or sublease and an agreement for a lease, underlease or sublease: Railways Act 1993 s 19(10). For the meaning of 'network installation' see note 3 infra. The Railways Act 1993 s 19 (as amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (2)).

3 For these purposes, 'installation owner' means any person: (1) who has an estate or interest in, or right over, a network installation; and (2) whose permission to use that network installation is needed by another before that other may use it; but also includes a person before he becomes an installation owner; and any reference to an installation owner's network installation is a reference to the network installation by reference to which he is an installation owner: Railways Act 1993 ss 19(9), 83(1) (s 19(9) amended by the Transport Act 2000 s 233(2)(a)). For these purposes, 'network installation' means any installation (other than track) which is comprised in a network: Railways Act 1993 s 19(10). Any reference in s 19 (as amended) to a network installation includes a reference to a part of a network installation and to one which is proposed to be constructed or is in the course of construction: s 19(11) (amended by the Transport Act 2000 s 233(2)(b)). For the purposes of the Railways Act 1993 ss 17-22C, Sch 4 (as amended), references to a network include references to a network which is proposed to be constructed or is in the course of construction: s 83(1A) (added by the Transport Act 2000 s 233(3)). For the meanings of 'network' and 'track' see PARA 82 note 8 ante.

4 For these purposes, 'installation access contract' means a contract under which: (1) a person (whether or not the applicant); and (2) so far as may be appropriate, any associate of that person, obtains permission from an installation owner to use the installation owner's network installation: Railways Act 1993 ss 19(9), 83(1). For the meaning of 'associate' see PARA 102 note 12 ante; definition applied by s 19(10). As to access contracts see further the Railways Act 1993 s 17 (as amended) (directions from the Office of Rail Regulation to enter into an access contract: see PARA 103 ante); s 18 (as amended) (contracts requiring approval or direction from the Office of Rail Regulation: see PARA 102 ante); s 20 (as amended) (exemptions: see PARA 108 post); s 21 (as amended) (model clauses for access contracts: see PARA 102 ante); s 22 (as amended) (amendment of access agreements: see PARA 106 post); s 22A (as added and amended) (directions to require more extensive use: see PARA 105 post).

5 For these purposes, 'applicant' means the person making the application for directions under *ibid* s 19(1) (as amended): s 19(10).

6 For these purposes, 'beneficiary' means the person mentioned in note 4 head (1) *supra*: *ibid* s 19(10).

7 Any reference in *ibid* s 19 (as amended) to obtaining permission to use a network installation includes: (1) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that network installation, whether the installation owner in question is to provide those services himself or to secure their provision by another (s 19(8)(a)); and (2) a reference to obtaining permission: (a) to enter upon the installation land, with or without vehicles (s 19(8)(b)(i)); (b) to bring things on to that land and keep them there (s 19(8)(b)(ii)); (c) to carry out works on that land (s 19(8)(b)(iii)); and (d) to use and maintain any things kept, or buildings or other works constructed, on that land (whether by the beneficiary or another) or any amenities situated on that land (s 19(8)(b)(iv)); and for the purposes of heads (2)(a) to (2)(d) *supra* 'installation land' means the land which constitutes the network installation in question (s 19(8)). For these purposes, 'ancillary service' means any service which is necessary or expedient for giving full effect to any permission or right which a person may have to use a network installation: s 19(10). As to the meaning of 'vehicle' see PARA 82 note 2 ante.

8 Any reference in *ibid* s 19 (as amended) to a person operating a network 'on behalf of the Secretary of State' is a reference to his operating the network in pursuance of any agreement or other arrangements made by the Secretary of State for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of Pt I (ss 4-83) (as amended) (the provision of railway services: see PARA 33 *et seq* ante) or the Railways Act 2005 Pt 4 (ss 22-45) (network modifications etc) (see PARA 145 *et seq* post) to secure the operation of that network: Railways Act 1993 s 19(7) (amended by the Railways Act 2005 ss 1(1), 54(4), Sch 1 Pt 1 para 12(2), Sch 11 paras 1, 3(b)). For the purposes of the Railways Act 1993 ss 17-22C, Sch 4 (as amended), references to a network include references to a network which is proposed to be constructed or is in the course of construction: s 83(1A) (as added: see note 3 *supra*). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (as amended), see s 4 (as amended); and PARA 33 ante. As to the power of the Secretary of State to exercise his functions under s 19 (as amended) for the purpose of encouraging railway investment or for purposes which include that purpose see PARA 36 ante.

9 *Ibid* s 19(1) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 12(1)). Directions must not be given under the Railways Act 1993 s 19(1) (as amended) in the case of any network installation if and to the extent that, as a result of an obligation or duty owed by the installation owner which arose before 2 April 1994 (ie before the coming into force of s 19 (see the Railways Act 1993 (Commencement No 4 and Transitional Provisions) Order 1994, SI 1994/571)), the consent of some other person is required by the installation owner before he may enter into the installation access contract: Railways Act 1993 s 19(2). Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

10 Is an installation access contract to which *ibid* s 19(3) (as amended) applies: see s 19(3).

11 Ibid s 19(3)(a) (amended by the Transport Act 2000 s 274, Sch 31 Pt IV). The text refers to directions under the Railways Act 1993 s 19(1) (as amended) (see the text and notes 1-9 supra): see s 19(3)(a) (as so amended).

12 Ibid s 19(3)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). The text refers to directions given by virtue of the Railways Act 1993 s 19(5) (see the text and note 16 infra): see s 19(3)(b) (as so amended).

13 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

14 Ibid s 19(3)(c) (added by the Transport Act 2000 s 230(3); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Where the Office of Rail Regulation gives or revokes a general approval under the Railways Act 1993 s 19(3)(c) (as added and amended), it must publish the approval or revocation in such manner as it considers appropriate: s 19(5A) (s 19(5A), (5B) added by the Transport Act 2000 s 230(4); the Railways Act 1993 s 19(5A) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). The revocation of a general approval given under the Railways Act 1993 s 19(3)(c) (as added and amended) must not affect the continuing validity of any installation access contract to which it applied: s 19(5B) (as so added).

15 Ie to which ibid s 19(3) (as amended) applies: see s 19(3).

16 Ibid s 19(3) (amended by the Transport Act 2000 s 230(3)). The Railways Act 1993 s 18(5)-(7) (as amended) (see PARA 102 ante) applies in relation to installation access contracts to which s 19(3) (as amended) applies as it applies in relation to access contracts to which s 18 (as amended) (see PARA 102 ante) applies, but with the following modifications: (1) for any reference to a facility owner there is substituted a reference to an installation owner (s 19(5)(a)); (2) for any reference to an access contract to which s 18 (as amended) applies there is substituted a reference to an installation access contract to which s 19(3) (as amended) applies (s 19(5)(b)); (3) for the reference to s 18(1)(b) (as amended) (see PARA 102 ante) there is substituted a reference to s 19(3)(b) (as amended) (see head (2) in the text) (s 19(5)(c)).

17 Ie to which ibid s 19(3) (as amended) (see the text and notes 10-16 supra) applies: see s 19(4) (as amended: see note 18 infra).

18 Ibid s 19(4) (amended by the Railways Act 2005 Sch 1 Pt 1 para 12(1)).

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105. Directions requiring amendments to access agreements.

The Office of Rail Regulation¹ may, on the application of the person permitted by an access agreement² to use the whole or part of a railway facility³ or network installation⁴, give directions⁵ requiring the parties to the access agreement to make to the agreement⁶:

- 381 (1) amendments permitting more extensive use⁷ of the railway facility or network installation by the applicant⁸; and
- 382 (2) any amendments which the Office of Rail Regulation considers necessary or desirable in consequence of those amendments⁹.

However, no directions are to be so given:

- 383 (a) in relation to a railway facility if and to the extent that: (i) the railway facility is¹⁰ an exempt facility¹¹; or (ii) performance of the access agreement as amended would necessarily involve the facility owner in being in breach of another access agreement¹²; or
- 384 (b) in relation to a railway facility or network installation if and to the extent that, as a result of an obligation or duty owed by the facility owner or installation owner which arose before 2 April 1994¹³, the consent¹⁴ of some other person is required by him before he may make the amendments¹⁵.

The Office of Rail Regulation may give directions requiring the parties to an access agreement to make to the access agreement amendments which are, in its opinion, necessary to give effect to the conditions of a licence¹⁶ or otherwise required in consequence of the conditions of a licence¹⁷. However, the Office of Rail Regulation does not have power to direct or otherwise require amendments to be made to an access agreement except to permit more extensive use¹⁸ or for purposes related to the conditions of a licence¹⁹ or pursuant to its powers to review access charges²⁰. Nevertheless, if an access agreement includes provision for any of its terms to be varied either by agreement of the parties²¹ or by direction or other requirement of the Office of Rail Regulation²², a variation made pursuant to that provision is not to be regarded for these purposes²³ as an amendment of the agreement²⁴.

1 As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties imposed on that Office by the Railways Act 1993 s 4 (as amended), ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended) (the provision of railway services), see PARA 33 et seq ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of access agreements and related matters see PARA 56 ante.

2 For these purposes, 'access agreement' means either an access contract which satisfies one of the conditions in ibid s 18(1)(a)-(c) (as amended) (see PARA 102 ante) or an installation access contract which satisfies one of the conditions in s 19(3)(a)-(c) (as amended) (see PARA 104 ante): s 83(1) (definition amended by the Transport Act 2000 s 230(6)(a), (b)). For the meaning of 'access contract' see PARA 102 note 2 ante; and for the meaning of 'installation access contract' see PARA 104 note 4 ante. As to access contracts see further the Railways Act 1993 s 17 (as amended) (directions from the Office of Rail Regulation to enter into an access contract: see PARA 103 ante); s 18 (as amended) (contracts requiring approval or direction from the Office of Rail Regulation: see PARA 102 ante); s 19 (as amended) (directions from the Office of Rail Regulation to enter into an installation access contract: see para 104 ante); s 20 (as amended) (exemptions: see PARA 108 post); s 21

(as amended) (model clauses for access contracts: see PARA 102 ante); and s 22 (as amended) (amendments to access contracts: see PARA 106 post).

3 For the purposes of *ibid* ss 17-22C, Sch 4 (as amended), references to a railway facility (including references to any track, station or light maintenance depot) include references to a railway facility (or any track, station or light maintenance depot) which is proposed to be constructed or is in the course of construction: s 83(1A) (added by the Transport Act 2000 s 233(3)). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; for the meaning of 'railway facility' generally see PARA 102 note 1 ante; for the meaning of 'station' see PARA 82 note 5 ante; and for the meaning of 'track' see PARA 82 note 8 ante.

4 In the Railways Act 1993 ss 22A-22B (as added and amended), 'network installation' has the same meaning as in s 19 (as amended) (see PARA 104 note 3 ante): s 22A(7)(b) (ss 22A-22C added by the Transport Act 2000 s 232(2)).

5 The Railways Act 1993 s 17(10), Sch 4 (Sch 4 as amended) (as to which see PARA 107 post) has effect with respect to applications for directions under s 22A (as added and amended) as it has effect with respect to applications for directions under s 17 (as amended) (see PARA 103 ante): s 22B(1) (as added: see note 4 supra). In its application by virtue of s 22B (as added and amended), Sch 4 (as amended) has effect with the following modifications: (1) in Sch 4 para 1, in the definition of 'facility owner', for 's 17(1)' there must be substituted 's 22A' and, in the definition of 'interested person', for 'enter into the required access contract' there must be substituted 'make the amendments' (s 22B(2)(a) (as so added)); (2) in Sch 4 para 2(1) (as amended), for 'which the applicant proposes should be contained in the required access contract' and 'to be contained in the required access contract' there must be substituted 'of the proposed amendments' (s 22B(2)(b) (as so added)); (3) in Sch 4 para 5(2) (as amended), for 'to the facility owner requiring him to enter into an access contract' there must be substituted 'under s 22A' (s 22B(2)(c) (as so added)); (4) for Sch 4 para 5(2)(a)(i), (ii), there must be substituted 'the amendments to be made and the date by which they are to be made; and' (s 22B(2)(d) (as so added)); (5) in Sch 4 para 6(2), for the words from 'facility owner's' to the end of Sch 4 para 6(2)(c) there must be substituted 'making of the amendments, the performance of the access agreement as amended or failing to take any step to protect the interests of the interested person in connection with the application for directions or the making of the amendments,' (s 22B(2)(e) (as so added)); and (6) in Sch 4 para 6(3) (as amended), for 'any access contract which is entered into' there must be substituted 'the amendments made' (s 22B(2)(f) (as so added)); and the definition of 'required access contract', and the words following that definition, in Sch 4 para 1 and Sch 4 para 5(4) are to be omitted (s 22B(2) (as so added)). In its application by virtue of s 22B (as added and amended) in relation to an application relating to an installation access contract, Sch 4 (as amended) has effect with the following further modifications: (a) references to the railway facility have effect as references to the network installation (s 22B(3)(a) (as so added)); (b) references to the facility owner have effect as references to the installation owner (s 22B(3)(b) (as so added)); and (c) in the definition of 'interested person' in Sch 4 para 1, for 's 17' there is to be substituted 's 19' (s 22B(3)(c) (as so added)). The Office of Rail Regulation may determine that, in their application by virtue of s 22B (as added and amended) in relation to any particular application, Sch 4 para 3 (as amended) and Sch 4 para 4 (as amended) have effect as if for any of the numbers of days specified in them there were substituted the lower number specified by that Office: s 22B(4) (as so added; amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). For the meaning of 'facility owner' see PARA 102 note 1 ante; and for the meaning of 'installation owner' see PARA 104 note 3 ante.

The Railways Act 1993 ss 22A-22C (as added and amended) bind the Crown: s 150(1)(a) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (2)).

6 Railways Act 1993 s 22A(1) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

However, nothing in the Railways Act 1993 s 22A (as added and amended) authorises the Office of Rail Regulation to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility or network installation: s 22A(6) (as so added; amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the meaning of 'lease' for these purposes see PARA 102 note 2 ante; definition applied by the Railways Act 1993 s 22A(7)(a) (as so added; amended by the Railway Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 2(4), Sch 1 Pt 1 para 4(d)(ii)).

7 For these purposes, 'more extensive use' means: (1) increased use for the purpose for which the applicant is permitted by the access agreement to use the railway facility or network installation (Railways Act 1993 s 22A(2)(a) (as added: see note 4 supra)); or (2) in the case of a railway facility, use for any other permitted purpose (s 22A(2)(b) (as so added)), and if the applicant is permitted to use only part of the railway facility or network installation, includes use for the purpose for which he is permitted to use it, or (in the case of a railway facility) for any other permitted purpose, of any other part of the railway facility or network installation (s 22A(2) (as so added)). For these purposes, 'permitted purpose', in relation to a railway facility, means a purpose for which directions may be given in relation to the railway facility under s 17 (as amended) (see PARA 103 ante): s 22A(3) (as so added).

8 *Ibid* s 22A(1)(a) (as added: see note 4 supra).

9 Ibid s 22A(1)(b) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

10 Ie by virtue of the Railways Act 1993 s 20 (as amended) (see PARA 108 post): see s 22A(4)(a) (as added: see note 4 supra).

11 Ibid s 22A(4)(a) (as added: see note 4 supra). For the meaning of 'exempt facility' see PARA 108 note 9 post.

12 Ibid s 22A(4)(b) (as added (see note 4 supra); amended by the Railway Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 1 Pt 1 para 4(d)(i)).

13 Ie before the coming into force of the Railways Act 1993 s 17 or s 19 (see the Railways Act 1993 (Commencement No 4 and Transitional Provisions) Order 1994, SI 1994/571): see the Railways Act 1993 s 22A(5) (as added: see note 4 supra).

14 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

15 Ibid s 22A(5) (as added: see note 4 supra).

16 For the meaning of 'licence' see PARA 83 note 6 ante. As to licence conditions see PARAS 84, 85 ante.

17 Railways Act 1993 s 22C(1) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c)).

As to the application of the Railways Act 1993 s 22C(1) (as added and amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 2 para 9; and PARA 98 note 5 ante.

18 Ie in accordance with the Railways Act 1993 s 22A (as added and amended) (see the text and notes 1-15 supra): see s 22C(2) (as added and amended: see note 20 infra).

19 Ie in accordance with ibid s 22C(1) (as added and amended) (see the text and notes 16-17 supra): see s 22C(2) (as added and amended: see note 20 infra).

20 Ibid s 22C(2) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). The text refers to the Office of Rail Regulation's power to direct or otherwise require amendments to be made to access agreements in accordance with the Railways Act 1993 s 19A, Sch 4A (both as added and amended) (review of access charges: see PARA 171 et seq post): see s 22C(2) (as so added and amended).

21 Ibid s 22C(3)(a) (as added: see note 4 supra).

22 Ibid s 22C(3)(b) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

23 Ie for the purposes of the Railways Act 1993 s 22C(2) (as added and amended) (see the text and notes 18-20 supra): see s 22C(3) (as added: see note 4 supra).

24 Ibid s 22C(3) (as added: see note 4 supra).

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106. Amendment of access agreements.

Any amendment, or purported amendment, of an access agreement¹ is void unless either the amendment has been approved² by the Office of Rail Regulation³ or is made pursuant to directions⁴. For these purposes, the Office of Rail Regulation may: (1) give the parties to any particular access agreement its general approval to the making to that access agreement of amendments of a description specified in the approval (and any approval so given may not be revoked)⁵; and (2) give its general approval to the making to access agreements, or to access agreements of a particular class or description⁶, of amendments of a description specified in the approval⁷.

However, if an access agreement includes provision for any of its terms to be varied either by agreement of the parties⁸ or by direction or other requirement of the Office of Rail Regulation⁹, a variation made pursuant to that provision is not to be regarded for these purposes¹⁰ as an amendment of the agreement¹¹.

1 For the meaning of 'access agreement' see PARA 105 note 2 ante.

2 Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

3 As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties imposed on that Office by the Railways Act 1993 s 4 (as amended), ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended) (the provision of railway services), see PARA 33 et seq ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of access agreements and related matters see PARA 56 ante.

4 Ibid s 22(1) (amended by the Transport Act 2000 s 232(1); and the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). The text refers to directions given under the Railways Act 1993 s 22A (as added and amended) (directions requiring amendments to access agreement permitting more extensive use: see PARA 105 ante) or s 22C (as added and amended) (directions requiring amendments for purposes related to the conditions of a licence: see PARA 105 ante) or s 19A, Sch 4A (both as added and amended) (review of access charges: see PARA 171 et seq post): see s 22(1) (as so amended). The Office of Rail Regulation does not have power to direct or otherwise require amendments to be made to an access agreement except in accordance with s 22A (as added and amended) or s 22C(1) (as added and amended) or s 19A, Sch 4A (both as added and amended): see s 22C(2) (as added and amended); and PARA 105 ante.

Neither the Office of Fair Trading nor the Office of Rail Regulation may exercise, in respect of an access agreement, the powers given by the Competition Act 1998 s 32 (as amended) (enforcement directions: see COMPETITION vol 18 (2009) PARA 135) or s 35(2) (as amended) (interim directions: see COMPETITION vol 18 (2009) PARA 136): Railways Act 1993 s 22(6A) (s 22(6A), (6B) added by the Competition Act 1998 s 54(3), Sch 10 para 15(5); the Railways Act 1993 s 22(6A) amended by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (7); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). However, the Railways Act 1993 s 22(6A) (as added) does not apply to the exercise of the powers given by the Competition Act 1998 s 35(2) (as amended) in respect of conduct which is connected with an access agreement and in respect of which s 35(1) (b) (s 35(1) as substituted) (see COMPETITION vol 18 (2009) PARA 136) applies: Railways Act 1993 s 22(6B) (as so added). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

The Railways Act 1993 s 22 (as amended) and s 22C (as added and amended) (see the text and notes 8-11 infra) bind the Crown: s 150(1)(a) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (2)).

5 Railways Act 1993 s 22(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c)).

6 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

7 Railways Act 1993 s 22(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c)). Where the Office of Rail Regulation gives or revokes a general approval under the Railways Act 1993 s 22(3) (as amended), it must publish the approval or revocation (as the case may be) in such manner as it considers appropriate: s 22(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). The revocation of a general approval given under the Railways Act 1993 s 22(3) (as amended) does not affect the continuing validity of any amendment made in accordance with, and before the revocation of, that approval: s 22(5).

8 Ibid s 22C(3)(a) (s 22C added by the Transport Act 2000 s 232(2)).

9 Railways Act 1993 s 22C(3)(b) (as added (see note 8 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

10 Ie for the purposes of the Railways Act 1993 s 22 (as amended) (see the text and notes 1-7 supra): see s 22C(3) (as added: see note 8 supra).

11 Ibid s 22C(3) (as added: see note 8 supra).

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107. Compulsory access to railway facilities.

Any application for directions¹ requiring facility owners² to enter into access contracts³ for the use of their railway facilities⁴ must be made in writing to the Office of Rail Regulation⁵ and must:

- 385 (1) contain particulars of the required rights⁶;
- 386 (2) specify the terms which the applicant⁷ proposes should be contained in the required access contract⁸; and
- 387 (3) include any representations which the applicant wishes to make with regard to the required rights or the terms to be contained in the required access contract⁹.

The applicant may, by giving notice in writing to the Office of Rail Regulation, withdraw or suspend the application at any time¹⁰.

The Office of Rail Regulation must¹¹ send a copy of any application for directions received by it to the facility owner¹², and invite the facility owner to make written representations to the Office of Rail Regulation within such period (being not less than 21 days from the date of issue of the invitation) as may be specified in the invitation¹³. The Office of Rail Regulation must send a copy of any such representations received by it to the applicant and invite him to make further written representations within such period (being not less than ten days from the date of issue of the invitation) as may be specified in the invitation¹⁴. The Office of Rail Regulation may from time to time request or invite further information¹⁵, clarification or representations from the applicant or the facility owner¹⁶.

Where the Office of Rail Regulation receives an application for directions, it must issue a direction to the facility owner requiring him to furnish the name and address of every interested person¹⁷ to the Office of Rail Regulation within such period (being not less than 14 days from the date of issue of that direction) as may be specified in that direction¹⁸; and where the name and address of an interested person is so furnished, the Office of Rail Regulation must invite the interested person to make written representations to it within such period (being not less than 14 days from the date of issue of the invitation) as may be specified in the invitation¹⁹. The Office of Rail Regulation must send a copy of any such representations received by it to the applicant and to the facility owner and invite each of them to make written representations within such period (being not less than ten days from the date of issue of the invitation) as may be specified in the invitation²⁰. The Office of Rail Regulation may from time to time request or invite further information, clarification or representations from any interested person²¹.

The Office of Rail Regulation must inform the applicant, the facility owner and any interested person of its decision on an application for directions²². If the Office of Rail Regulation decides to give directions to the facility owner requiring him to enter into an access contract²³: (a) the directions must specify the terms of the access contract and the date by which the access contract is to be entered into²⁴; and (b) the Office of Rail Regulation may also give directions to the applicant or the facility owner requiring him to pay compensation of such amount as may be specified in the directions to such interested person as may be so specified²⁵. The facility owner is released from his duty to comply with the directions if the applicant fails to enter into an access contract on the terms required by the directions by the date specified for that purpose in the directions²⁶.

Any directions given²⁷ are binding on the person to whom they are given, notwithstanding any obligation or duty he may owe to an interested person and whether or not the interested person has had an opportunity to make representations²⁸. No interested person, and no successor²⁹ to an interested person, may take any step for the purpose of enforcing or exercising any right he may have against the facility owner in respect of, or in consequence of, the facility owner's:

- 388 (i) entering into an access contract pursuant to directions³⁰;
- 389 (ii) performing such a contract in accordance with its terms³¹; or
- 390 (iii) failing to take any step to protect the interests of the interested person in connection with the application for directions, or the making of the access contract³²,

whether or not the interested person had, or has had, an opportunity to make representations³³.

1 For these purposes, 'application for directions' means an application for directions under the Railways Act 1993 s 17 (as amended) (see PARA 103 ante); see s 17(10), Sch 4 para 1. For the meaning of 'directions' see PARA 103 note 3 ante; definition applied by Sch 4 para 1. However, Sch 4 (as amended) has effect also (with modifications) with respect to applications for directions under s 19(1) (as amended) (directions from the Office of Rail Regulation to enter into an installation access contract: see PARA 104 ante) and under s 22A (as added and amended) (directions requiring amendments to access agreement permitting more extensive use: see PARA 105 ante) as it has effect with respect to applications for directions under s 17 (as amended): see s 19(12), s 22B(1) (as added and amended); and PARAS 104, 105 ante.

2 For these purposes, 'facility owner' means the facility owner mentioned in *ibid* s 17(1) (as amended) (see PARA 103 ante); Sch 4 para 1. As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 *supra*.

3 For the meaning of 'access contract' see PARA 102 note 2 ante. As to access contracts see further the Railways Act 1993 s 18 (as amended) (contracts requiring approval or direction from the Office of Rail Regulation: see PARA 102 ante); s 19 (as amended) (directions from the Office of Rail Regulation to enter into an installation access contract: see PARA 104 ante); s 20 (as amended) (exemptions: see PARA 108 post); s 21 (as amended) (model clauses for access contracts: see PARA 102 ante); s 22 (as amended) (amendment of access agreements: see PARA 106 ante); s 22A (as added and amended) (directions to require more extensive use: see PARA 105 ante).

4 See *ibid* s 17 (as amended); and PARA 103 ante. For the purposes of ss 17-22C, Sch 4 (as amended), references to a railway facility (including references to any track, station or light maintenance depot) include references to a railway facility (or any track, station or light maintenance depot) which is proposed to be constructed or is in the course of construction: s 83(1A) (added by the Transport Act 2000 s 233(3)). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; for the meaning of 'railway facility' generally see PARA 102 note 1 ante; for the meaning of 'station' see PARA 82 note 5 ante; and for the meaning of 'track' see PARA 82 note 8 ante. As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 *supra*.

5 *Ibid* Sch 4 para 2(1) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 *supra*. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties imposed on that Office by s 4 (as amended), ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended) (the provision of railway services), see PARA 33 et seq ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of access agreements, access contracts and installation access contracts and related matters see PARA 56 ante.

The Railways Act 1993 Sch 4 (as amended) binds the Crown: s 150(1)(k).

6 *Ibid* Sch 4 para 2(1)(a). For these purposes, 'required rights' means the permission to use the railway facility in question which it is sought to obtain by virtue of the application for directions: Sch 4 para 2(3). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 *supra*.

7 For the meaning of 'applicant' see PARA 103 note 6 ante; definition applied by *ibid* Sch 4 para 1. As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 *supra*.

8 Ibid Sch 4 para 2(1)(b). For these purposes, 'required access contract' means the access contract which the applicant seeks to obtain by virtue of the application for directions: Sch 4 para 1. As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra. For the meaning of 'access contract' see PARA 102 note 2 ante.

9 Ibid Sch 4 para 2(1)(c). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

10 Ibid Sch 4 para 2(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

11 Ibid Sch 4 para 3(1) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

12 Ibid Sch 4 para 3(1)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra. As to the service of documents see s 149; and PARA 34 note 13 ante.

13 Ibid Sch 4 para 3(1)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

14 Ibid Sch 4 para 3(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

15 As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended); and PARA 419 post.

16 Ibid Sch 4 para 3(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

17 For these purposes, 'interested person' means any person whose consent is required by the facility owner, as a result of an obligation or duty owed by the facility owner which arose after 2 April 1994 (ie the coming into force of ibid s 17 (as amended) (see PARA 103 ante)), before the facility owner may enter into the required access contract: Sch 4 para 1. As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra. Any consent or approval under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

18 Ibid Sch 4 para 4(1) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). The duty of the facility owner to furnish the Office of Rail Regulation with the name and address of every interested person pursuant to a direction under the Railways Act 1993 Sch 4 para 4 (as amended) is a duty owed to each interested person and (subject to the defences and incidents applying in actions for breach of statutory duty) any contravention of that duty is actionable at the suit or instance of the interested person and the facility owner is liable for any loss or damage suffered by the interested person as a result of any access contract which is entered into in consequence of the application for directions: Sch 4 para 6(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the meaning of 'contravention' see PARA 29 note 13 ante. It is a defence in any proceedings brought by virtue of the Railways Act 1993 Sch 4 para 6(3) (as amended) for the facility owner to show that he took all reasonable steps, and exercised all due diligence, to avoid contravening the duty in question: Sch 4 para 6(4). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

19 Ibid Sch 4 para 4(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

20 Ibid Sch 4 para 4(3) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

21 Ibid Sch 4 para 4(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

22 Ibid Sch 4 para 5(1) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

23 Ibid Sch 4 para 5(2) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to directions under the Railways Act 1993 s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

24 Ibid Sch 4 para 5(2)(a). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

25 Ibid Sch 4 para 5(2)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Any compensation directed to be paid by virtue of the Railways Act 1993 Sch 4 para 5(2)(b) (as amended) is recoverable as a debt due: Sch 4 para 5(3). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

26 Ibid Sch 4 para 5(4). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

27 Ie either on an application for directions or under ibid Sch 4 (as amended): see Sch 4 para 6(1).

28 Ibid Sch 4 para 6(1). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

29 For these purposes, 'successor', in relation to an interested person, means any person: (1) who is a successor in title to the interested person; or (2) whose rights derive directly or indirectly from the interested person: ibid Sch 4 para 6(5). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

30 Ibid Sch 4 para 6(2)(a). The text refers to directions under s 17 (as amended) (see PARA 103 ante): see Sch 4 para 6(2)(a). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

31 Ibid Sch 4 para 6(2)(b). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

32 Ibid Sch 4 para 6(2)(c). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

33 Ibid Sch 4 para 6(2). As to directions under s 19 (as amended) and s 22A (as added and amended) see note 1 supra.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(iii) Access/A. ACCESS REGIME UNDER THE RAILWAYS ACT 1993/108. Exemption of railway facilities from the access regime.

108. Exemption of railway facilities from the access regime.

The Secretary of State¹ may, after consultation with the Office of Rail Regulation², by order grant exemption from:

- 391 (1) the provisions relating to directions which require facility owners³ to enter into access contracts⁴ for the use of their railway facilities⁵;
- 392 (2) the provisions relating to access contracts requiring the approval of the Office of Rail Regulation⁶; or
- 393 (3) the provisions relating to directions which require amendments to be made to an access agreement⁷ to permit more extensive use⁸,

in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified⁹. Such a facility exemption may be granted¹⁰: (a) to persons of a particular class or description¹¹ or to a particular person¹²; and (b) in respect of railway facilities of a particular class or description or a particular railway facility, or in respect of part only of any such railway facilities or facility¹³.

If a facility owner makes an application¹⁴ to the Office of Rail Regulation for the grant of an exemption under head (1), head (2) or head (3) above in respect of the whole or any part of his railway facility¹⁵, the Office of Rail Regulation, after consultation with the Secretary of State¹⁶:

- 394 (i) may either grant¹⁷ or refuse the exemption, whether wholly or to such extent as it may specify in the exemption¹⁸; and
- 395 (ii) if and to the extent that it grants the exemption, may do so subject to compliance with such conditions (if any) as it may so specify¹⁹.

If any condition²⁰ (the 'broken condition') of a facility exemption is not complied with: (A) the Secretary of State²¹; or (B) the Office of Rail Regulation²², may give to any relevant person²³ a direction declaring that the facility exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction²⁴.

Subject to the provisions concerning such a broken condition²⁵, a facility exemption, unless previously revoked in accordance with any term contained in the facility exemption, continues in force for such period as may be specified in, or determined by or under, the facility exemption²⁶.

1 As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under ibid Pt I (as amended), see s 4 (as amended); and PARA 33 ante. As to the maintenance by the Office of Rail Regulation of a register of the provisions of every facility exemption granted and related matters see PARA 56 ante.

3 For the meaning of 'facility owner' see PARA 102 note 1 ante.

4 For the meaning of 'access contract' see PARA 102 note 2 ante.

5 The exemption from the Railways Act 1993 s 17 (as amended) (see PARA 103 ante): see s 20(1) (as amended: see note 9 infra). As to directions given under the Railways Act 1993 generally see s 144 (as amended); and PARA 29 note 13 ante. For the purposes of ss 17-22C, Sch 4 (as amended), references to a railway facility (including references to any track, station or light maintenance depot) include references to a railway facility (or any track, station or light maintenance depot) which is proposed to be constructed or is in the course of construction: s 83(1A) (added by the Transport Act 2000 s 233(3)). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; for the meaning of 'railway facility' generally see PARA 102 note 1 ante; for the meaning of 'station' see PARA 82 note 5 ante; and for the meaning of 'track' see PARA 82 note 8 ante.

6 The exemption from the Railways Act 1993 s 18 (as amended) (see PARA 102 ante): see s 20(1) (as amended: see note 9 infra).

7 For the meaning of 'access agreement' see PARA 105 note 2 ante.

8 The exemption from the Railways Act 1993 s 22A (as added and amended) (see PARA 105 ante): see s 20(1) (as amended: see note 9 infra).

9 Ibid s 20(1) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 23(1), (2); and the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). Accordingly, for these purposes, 'facility exemption' means an exemption from the Railways Act 1993 s 17 (as amended) (see PARA 103 ante), s 18 (as amended) (see PARA 102 ante) or s 22A (as added and amended) (see PARA 105 ante) granted under any provision of s 20 (as amended) in respect of the whole or any part of a railway facility; and a railway facility is an 'exempt facility' if and to the extent that it is the subject of such an exemption: ss 20(13), 83(1) (s 20(13) amended by the Transport Act 2000 Sch 27 paras 17, 23(1), (2)). Facility exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases: Railways Act 1993 s 20(11).

The Secretary of State, in exercise of his powers under the Railways Act 1993 s 20 (as amended), has made the Railways (London Regional Transport) (Exemptions) Order 1994, SI 1994/573 (amended by the Greater London Authority Act 1999 s 198; and SI 2003/1615); the Railways (Heathrow Express) (Exemptions) Order 1994, SI 1994/574 (amended by SI 2002/2703); and the Railways (Class and Miscellaneous Exemptions) Order 1994, SI 1994/606. As to the making of orders under the Railways Act 1993 generally see PARA 35 note 12 ante.

The Railways Act 1993 s 20 (as amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

As from a day to be appointed under the Greater London Authority Act 1999 s 425(2), the Secretary of State may, after consultation with the Office of Rail Regulation, by order grant at any time a facility exemption under the Railways Act 1993 s 20 (as amended) in respect of railway assets comprised in, or used on or in connection with, a network on which some or all of the regular scheduled passenger services are operated by London Regional Transport or Transport for London or a subsidiary of London Regional Transport or Transport for London: see the Greater London Authority Act 1999 s 199(1), (2) (s 199(1) amended by the Transport Act 2000 s 274, Sch 31 Pt IV; the Railways and Transport Safety Act 2003 Sch 2 Pt 2 para 19(q); and the Railways Act 2005 Sch 13 Pt 1). However, the power so conferred is exercisable only if the Secretary of State has received an application for the grant of the exemption from the appropriate London transport authority: see the Greater London Authority Act 1999 s 199(3). For the meaning of the 'appropriate London transport authority' see PARA 92 note 11 ante. However, at the date at which this volume states the law, no such day had been appointed. As to transport in London generally see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 265 et seq.

10 Railways Act 1993 s 20(2) (amended by the Transport Act 2000 s 274, Sch 27 paras 17, 23(1), (3), Sch 31 Pt IV).

11 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

12 Ibid s 20(2)(a).

13 Ibid s 20(2)(b).

14 The under ibid s 20(3) (as amended) (see the text and notes 15-16 infra): see s 20(3) (as amended: see note 16 infra).

15 Any application for a facility exemption under ibid s 20(3) (as amended) must be made in writing; and where any such application is made, the Office of Rail Regulation may require the applicant to furnish it with such information as the Office of Rail Regulation may consider necessary to enable it to decide whether to grant or refuse the facility exemption: s 20(10) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)). As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of

information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see s 146 (cited in PARA 416 post).

16 Ibid s 20(3) (amended by the Transport Act 2000 Sch 27 paras 17, 23(1), (2); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

17 Before granting a facility exemption under the Railways Act 1993 s 20(3) (as amended), the Office of Rail Regulation must give notice:

- 78 (1) stating that it proposes to grant the facility exemption (s 20(4)(a) (s 20(4)(a), (b) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)));
- 79 (2) stating the reasons why it proposes to grant the facility exemption (Railways Act 1993 s 20(4)(b) (as so amended)); and
- 80 (3) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed facility exemption may be made (s 20(4)(c)),

and that Office must consider any representations or objections which are duly made and not withdrawn (s 20(4) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a))). A notice under the Railways Act 1993 s 20(4) (as amended) must be given by publishing the notice in such manner as the Office of Rail Regulation considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the facility exemption: s 20(5) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). For the meaning of 'notice' see PARA 34 note 4 ante.

18 Railways Act 1993 s 20(3)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

19 Railways Act 1993 s 20(3)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b), 9).

20 For these purposes, 'condition', in relation to a facility exemption, means any condition subject to compliance with which the facility exemption was granted: Railways Act 1993 s 20(7).

21 Ibid s 20(6)(a). Head (A) in the text applies in the case of a facility exemption under s 20(1) (as amended) (see the text and notes 1-9 supra): see s 20(6)(a).

22 Ibid s 20(6)(b) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Head (B) in the text applies in the case of a facility exemption under the Railways Act 1993 s 20(3) (as amended) (see the text and notes 14-16 supra): see s 20(6)(b) (as so amended).

23 For these purposes, 'relevant person', in the case of any facility exemption, means a person who has the benefit of the facility exemption and who: (1) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or (2) is the facility owner in the case of the railway facility in relation to which the broken condition is not complied with: ibid s 20(7).

24 Ibid s 20(6).

25 Ie subject to ibid s 20(6) (see the text and notes 20-24 supra): see s 20(8).

26 Ibid s 20(8).

UPDATE

108 Exemption of railway facilities from the access regime

NOTE 9--SI 1994/573 further amended: SI 2009/3336.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(iii) Access/B. ACCESS REGIME FOR RAILWAY UNDERTAKINGS ESTABLISHED IN EEA STATES/(A) Access to Railway Infrastructure and Services/109. Entitlement to access and transit rights.

B. ACCESS REGIME FOR RAILWAY UNDERTAKINGS ESTABLISHED IN EEA STATES

(A) ACCESS TO RAILWAY INFRASTRUCTURE AND SERVICES

109. Entitlement to access and transit rights.

An international grouping¹ is entitled, on equitable conditions: (1) in the case of an international grouping which includes a railway undertaking established in the United Kingdom², to such access and transit rights³; or (2) in the case of any other international grouping, to such transit rights⁴, as may be necessary for the provision of international transport services between the EEA states where the undertakings constituting the grouping are established⁵. A railway undertaking is entitled, on equitable conditions, to such access as may be necessary for the purpose of the operation of any type of rail freight service⁶. It is the duty of the infrastructure manager⁷ to ensure that the entitlements so conferred are honoured⁸.

An international grouping or railway undertaking is entitled⁹ to track access to, and the supply of services in, terminals and ports linked to the rail network which serve, or potentially serve, more than one final customer¹⁰. Requests by international groupings and railway undertakings, in accordance with such entitlements, may be subject to restrictions only if viable alternatives by rail under market conditions exist¹¹. It is the duty of the infrastructure manager or, as the case may be, service provider¹² to ensure that the entitlements so conferred¹³ are honoured, and that access to, and the supply of, services are granted in a transparent and non-discriminatory manner¹⁴.

1 For these purposes, 'international grouping' means any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States: Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) art 3; definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). 'Railway undertaking' means any public or private undertaking licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction (and this includes undertakings which provide traction only): Council Directive 91/440/EEC (OJ L237, 24.08.1991, p 25) art 3 (definition substituted by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L75, 15.03.2001, p 1)); Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 2(k); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2).

However, the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, do not apply to the management of the tunnel system and the rail transport activity of the Concessionaires in respect of any shuttle service: reg 4(7). For these purposes, the 'tunnel system' means the tunnel rail link, together with its associated works, facilities and installations, to be constructed in pursuance of the Treaty, and incorporating: (1) tunnels under the English Channel between Cheriton, Folkestone, in Kent and Fréthun in the Pas de Calais, comprising two main tunnels capable of carrying both road traffic on shuttle trains and rail traffic, and an associated service tunnel; (2) two terminal areas, for controlling access to and egress from the tunnels, located at the portals of the tunnels in the vicinity of Cheriton, Folkestone and Fréthun respectively; (3) a service and maintenance area at the Old Dover Colliery site; (4) an inland clearance depot at Ashford, in Kent, for the accommodation, in connection with the application to them of customs and other controls, of freight vehicles which have been or are to be conveyed through the tunnels on shuttle services; (5) necessary links with the road and rail networks of each country; and (6) the fixed and movable equipment needed for the operation of

the tunnels and the associated works, facilities and installations mentioned in heads (2) to (5) supra or for the operation of shuttle services using the tunnels: see the Channel Tunnel Act 1987 s 1(7); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). The 'Treaty' means the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, signed at Canterbury on 12 February 1986, together with its supplementary protocols and arrangements; and the Concession between Her Majesty's Government in the United Kingdom and the Government of the French Republic on the one hand and private Concessionaires on the other hand which, in accordance with Article 1 of that Treaty, regulates, together with that Treaty, the construction and operation of the Channel fixed link referred to in that Article: see the Channel Tunnel Act 1987 ss 1(1), (4); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). The 'Concessionaires' means the person or persons who have for the time being the function of constructing and operating or (as the case may be) of operating the tunnel system: see the Channel Tunnel Act 1987 ss 1(8), 49(1); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). 'Shuttle service' means a service operated by means of a shuttle train; and 'shuttle train' means a train designed for the purpose of carrying road traffic between Cheriton, Folkestone and Fréthun by way of the tunnels: see the Channel Tunnel Act 1987 s 1(9); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). The Channel Tunnel Act 1987 s 43, Sch 6 para 2 (as amended) (disapplication of enactments in the case of Concessionaires and through service operators), Sch 6 para 3 (as amended) (extension of enactments in relation to through service operators) and Sch 6 para 4 (modification of enactments applying to Concessionaires and through service operators) apply to international groupings and railway undertakings, other than the Concessionaires and the British Railways Board, in relation to the provision of international services in exercise of access or transit rights under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 who are not through service operators (within the meaning of the Channel Tunnel Act 1987 Sch 6 (as amended)) as they apply to those who are: Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 34. As to the establishment and abolition of the British Railways Board see PARA 44 ante.

As to further provision for the scope and application of these regulations see note 3 infra.

2 For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

3 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 5(1)(a). For these purposes, 'access and transit rights' means rights of access to railway infrastructure and rights of transit through a Member State using the railway infrastructure: reg 3(1). 'Railway infrastructure' consists of the items described in the Railways Act 1993 s 83 as 'network' (see PARA 82 note 8 ante), 'station' (see PARA 82 note 5 ante) and 'track' (see PARA 82 note 8 ante), but excludes such items: (1) which consist of, or are situated on, branch lines and sidings whose main operation is not directly connected to the provision of train paths; (2) within a maintenance or goods depot, or a marshalling yard; (3) within a railway terminal, port, factory, mine, quarry, nuclear site or site housing electrical plant; (4) which consist of, or are situated on, networks reserved mainly for local, historical or touristic use; and (5) within a military establishment: Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). For these purposes, 'electrical plant' has the same meaning as in the Electricity Act 1989 (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041); 'factory' has the same meaning as in the Factories Act 1961 (see PARA 26 ante); 'military establishment' means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence; 'mine' has the same meaning as in the Mines and Quarries Act 1954 (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5); 'nuclear site' has the same meaning as in the Radioactive Substances Act 1993 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1450); and 'quarry' has the same meaning as in the Quarries Regulations 1999, SI 1999/2024 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838): Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). For these purposes, 'infrastructure capacity' means the potential to schedule train paths requested for an element of infrastructure for a certain period: Directive 2001/14/EC (OJ L75, 15.03.2001, p 29) art 2(g); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). 'Train path' means the infrastructure capacity needed to run a train between two places over a given time-period: Directive 2001/14/EC (OJ L75, 15.03.2001, p 29) art 2(l); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2).

Regulations 5-6 (see the text and notes 1, 2 supra, 4-14 infra), regs 8-10 (see PARAS 111, 112 post), reg 12(5), (6) and Sch 3 para 1(2) (see PARA 115 post) apply only to the management of railway infrastructure and to the rail transport activities of the railway undertakings established or to be established in an EEA State, except railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services: see reg 4(1), (2). With the exception of these provisions, Pts 2-5 (regs 5-27) and Schs 2-4 apply to the use of railway infrastructure and, to the extent stated to apply, the services described in reg 7 and Sch 2 (see PARA 110 post), for domestic and international rail traffic: reg 4(3). However, reg 4(3) does not apply to: (a) stand-alone local and regional networks for passenger services on railway infrastructure (reg 4(4)(a)); (b) networks intended only for the operation of urban or suburban passenger services (reg 4(4)(b)); or (c) until such time as capacity is requested by another applicant, to regional networks used for regional freight services solely by a railway undertaking whose activity is limited to the provision of solely urban, suburban or regional services (see reg 4(2), 4(4)(c)); or (d) networks situated within a factory, nuclear site, or site housing electrical plant, within a mine

or quarry, used solely in connection with the carrying out of any building works or within a military establishment, that are used only by the person responsible for that network for the purposes of freight operations connected with such premises or building works (reg 4(4)(d)). Furthermore, Pt 5 (regs 16-27) and Sch 4 (see PARA 118 post) do not apply to the services referred to in reg 6 (services in terminals and ports linked to the rail network: see the text and notes 9-14 infra): reg 4(5). However, Pts 6-7 (regs 28-40) and reg 2(4), Sch 1 (amendments and repeals) apply to all matters within any part of the scope of Pts 2-5 and Schs 2-4: reg 4(6). For these purposes, 'EEA state' means a Member State, Norway, Iceland or Liechtenstein: reg 3(1). 'Urban and suburban services' means transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas; and 'regional services' means transport services operated to meet the transport needs of a region: Council Directive 91/440/EEC of 29 July 1991 (OJ L237, 24.08.1991, p 25) art 3; definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2).

4 Ibid reg 5(1)(b). For these purposes, 'transit rights' means rights of transit through a Member State using railway infrastructure located in that member state: reg 3(1).

5 Ibid reg 5(1).

6 Ibid reg 5(2).

7 For these purposes, 'infrastructure manager' means any body or undertaking that is responsible in particular for the establishment and maintenance of railway infrastructure, and for the provision with respect to that infrastructure of network services as defined in the Railways Act 1993 s 82 (as to which see PARA 82 ante) but, notwithstanding that some or all of the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings, the obligations in respect of those functions remain with the infrastructure manager except where the functions and obligations pass to an allocation body by virtue of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 16(3) (see PARA 118 post) or to a charging body by virtue of reg 12(7) (see PARA 114 post): reg 3(1). For these purposes, 'allocation body' means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of reg 16(3), for the functions and obligations of the infrastructure manager under Pt 5 and Sch 4 (see PARA 118 post); and 'charging body' means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of reg 12(7), for the functions and obligations of the infrastructure manager under Pt 4 (regs 12-15) and Sch 3 (see PARA 115 post): reg 3(1). 'Network' means the entire railway infrastructure owned and/or managed by an infrastructure manager: Directive 2001/14/EC (OJ L75, 15.03.2001, p 29) art 2(i); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2).

8 Ibid reg 5(3). The text refers to the entitlements conferred by reg 5 (see the text and notes 1-6 supra): see reg 5(3). Without prejudice to the generality of reg 29 (see PARA 61 ante), if an international grouping or railway undertaking is denied the entitlements conferred on it by reg 5, that international grouping or railway undertaking has a right of appeal to the Office of Rail Regulation in accordance with reg 29: reg 5(4). The 'Office of Rail Regulation' means the body established under the Railways and Transport Safety Act 2003 s 15 (see PARA 49 et seq ante): Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1).

9 Ie for the purposes of the rail activities referred to in ibid reg 5 (see the text and notes 1-8 supra): reg 6(1).

10 Ibid reg 6(1).

11 Ibid reg 6(2).

12 For these purposes, 'service provider' means a body or undertaking that supplies any of the services: (1) to which access is granted by virtue of ibid reg 6 (see the text and notes 9-11 supra) or reg 7 (see PARA 110 post); or (2) listed in Sch 2 para 2 (see PARA 110 post), Sch 2 para 3 (see PARA 110 post) or Sch 2 para 4 (see PARA 110 post), whether or not that body or undertaking is also an infrastructure manager: reg 3(1).

13 Ie the entitlements conferred by ibid reg 6: see reg 6(3).

14 Ibid reg 6(3). Without prejudice to the generality of reg 29 (see PARA 61 ante), if an international grouping or railway undertaking is denied the entitlements conferred on it by reg 6, or if the entitlements are made subject to restrictions other than in accordance with reg 6(2) (see the text and note 11 supra), that international grouping or railway undertaking has a right of appeal to the Office of Rail Regulation in accordance with reg 29: reg 6(4).

UPDATE

109 Entitlement to access and transit rights

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1-8--SI 2005/3049 reg 5 substituted: SI 2009/1122.

TEXT AND NOTE 1--Directive 91/440 art 3 is amended by European Parliament and EC Council Directive 2007/58 (OJ L315, 3.12.07, p 44) art 1. The term 'international grouping' is deleted. The term 'international passenger service' is inserted and defined as: 'a passenger service where the train crosses at least one border of a member state and where the principal purpose of the service is to carry passengers between stations located in different member states; the train may be joined and and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border'. Member states' legislation must implement the amendment before 4 June 2009 (Directive 2007/58 art 3).

NOTE 1--SI 2005/3049 reg 34 amended: SI 2009/1122.

NOTE 3--Definition of 'access and transit rights' substituted: SI 2009/1122. Directive 2001/14 art 2 is amended by Directive 2007/58 art 2. The term 'transit' is inserted as art 2(n) and defined as: 'the crossing of the Community territory which is carried out without loading or unloading of goods, and/or without picking up of passengers nor setting them down in the Community territory'. Member states' legislation must implement the amendment before 4 June 2009 (Directive 2007/58 art 3).

NOTE 4--Definition of 'transit rights' omitted: SI 2009/1122.

TEXT AND NOTES 9, 10, 14--SI 2005/3049 reg 6(1), (4) amended: SI 2009/1122.

TEXT AND NOTE 11--SI 2005/3049 reg 6(2) amended: SI 2009/1122.

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110. Entitlement to access to services.

Applicants¹ are entitled to services comprising: (1) the minimum access package²; and (2) the track access to service facilities and the supply of services³. If the infrastructure manager or service provider to whom a request has been made for the supply of a service referred to in head (1) or head (2) above does not supply such a service, the infrastructure manager must, if he is the provider of the main infrastructure, use all reasonable endeavours to facilitate the supply of that service through the appropriate service provider⁴. The infrastructure manager or, as the case may be, service provider must ensure that the entitlements so granted⁵ are honoured, and access to the services referred to in head (1) or head (2) above must be provided in a non-discriminatory manner⁶.

Where the infrastructure manager or service provider offers to supply certain specified additional services⁷, he must, in response to a request from an applicant, supply the services to that applicant⁸. An applicant may request the supply of certain specified ancillary services⁹ from an infrastructure manager or service provider but that infrastructure manager or service provider is under no obligation to supply the services requested¹⁰.

1 For these purposes, 'applicant' means: (1) a railway undertaking licensed in accordance with the provisions of Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L75, 15.03.2001, p 26); and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)) (see PARA 30 ante); (2) an international grouping of railway undertakings; or (3) a body or undertaking with public service or commercial interest in procuring infrastructure capacity, such as public authorities under Regulation (EEC) 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L156, 28.06.1969, p 1 (S Edn 1952-1972 p 33)) (as amended) (see PARA 28 ante) and shippers, freight forwarders, and combined transport operators: Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). Any applicant granted transit, or access and transit, rights under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 must, if and to the extent that it would not, apart from reg 33, have statutory authority to run trains over any track in exercise of such rights, be taken to have statutory authority to do so: reg 33. For the meanings of 'international grouping' and 'railway undertaking' see PARA 109 note 1 ante; and for the meaning of 'infrastructure capacity' see PARA 109 note 3 ante.

As to the application and scope of Pt 7 (reg 33) see PARA 109 note 3 ante.

2 Ibid reg 7(1)(a). The minimum access package referred to in reg 7(1) comprises: (1) handling of requests for infrastructure capacity; and (2) the right to utilise such capacity as is granted and, in particular: (a) the right to use such running track points and junctions as are necessary to utilise that capacity; (b) train control, including signalling, train regulation, dispatching and the communication and provision of information on train movements; and (c) all other information as is necessary to implement or to operate the service for which capacity has been granted: reg 7(1), Sch 2 para 1. The Railways Act 1993 s 145 (as amended) (restriction on disclosure of information) (see PARA 419 post) has effect in relation to information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 and which relates to the affairs of any individual or to any particular business as it has effect in relation to such information obtained under or by virtue of any of the provisions of the Railways Act 1993: Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 39.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 2 (regs 5-7), Pt 7 (regs 33-40) see PARA 109 note 3 ante.

3 Ibid reg 7(1)(b). Track access to services facilities and the supply of services referred to in reg 7(1), (4) comprise: (1) where available, the use of electrical supply equipment for traction current; (2) refuelling

facilities; (3) passenger stations, including buildings and other facilities; (4) freight terminals; (5) marshalling yards; (6) train formation facilities; (7) storage sidings; and (8) maintenance and other technical facilities: Sch 2 para 2. Where the infrastructure manager or service provider supplies any of the services described in Sch 2 para 2, requests for the supply of such services may only be refused if a viable alternative means of the service being provided under market conditions exists: reg 7(4). For the meaning of 'infrastructure manager' see PARA 109 note 7 ante; and for the meaning of 'service provider' see PARA 109 note 12 ante.

4 Ibid reg 7(2).

5 Ie the entitlements granted by reg 7: see reg 7(3).

6 Ibid reg 7(3). Without prejudice to the generality of reg 29 (see PARA 61 ante), if an applicant is denied the entitlements conferred on it by reg 7, that applicant has a right of appeal to the Office of Rail Regulation in accordance with reg 29: reg 7(7). For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

7 Ie any of the additional services described in ibid Sch 2 para 3, which may comprise: (1) traction current; (2) pre-heating of passenger trains; (3) the supply of fuel, shunting and all other services provided at the access services facilities referred to in Sch 2 para 2 (see note 3 supra); and (4) tailor-made contracts for the control of the transport of dangerous goods or for assistance in running abnormal trains: see reg 7(5), Sch 2 para 3.

8 Ibid reg 7(5). As to the provision made for appeals see note 6 supra.

9 Ie any of the ancillary services described in ibid Sch 2 para 4, which may comprise: (1) access to the telecommunication network; (2) the provision of supplementary information; and (3) technical inspection of rolling stock: see reg 7(6), Sch 2 para 4.

10 Ibid reg 7(6).

UPDATE

110 Entitlement to access to services

NOTE 1--Definition of 'applicant' amended: SI 2009/1122. EEC Council Regulation 1191/69 repealed and replaced from 3 December 2009 by European Parliament and EC Council Regulation 1370/2007 (OJ L315, 3.12.07, p 1) on public passenger transport services by rail and by road. Note that the old regulation will continue to apply to freight transport services until 2 December 2012. SI 2005/3049 reg 33 amended: SI 2009/1122.

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(B) INFRASTRUCTURE MANAGEMENT

111. Independence and separation of infrastructure management.

Railway undertakings¹ must, in their management, administration and internal control over administrative, economic and accounting matters, maintain the status of an independent operator and hold, in particular, assets, budgets and accounts which are separate from those of the state². Railway undertakings must keep and publish profit and loss accounts and either balance sheets or annual statements of assets and liabilities for business relating to the provision of rail-freight transport services³.

Any body which incorporates the functions of both infrastructure manager and railway undertaking: (1) must prepare and publish separate profit and loss accounts and balance sheets in respect of business relating to the provision of transport services as a railway undertaking and in respect of business relating to the management of railway infrastructure⁴; and (2) must ensure that public funds granted to such a body are not transferred between that part of the body responsible for the provision of transport services and that responsible for the management of railway infrastructure⁵. Accounts for the areas of activity described in head (1) and head (2) above must be kept in such a way as to reflect the prohibitions contained therein⁶; and the monitoring of the observance of public service obligations, where these are stipulated⁷, must be carried out by bodies or undertakings which do not provide rail transport services⁸.

1 For the meaning of 'railway undertaking' see PARA 109 note 1 ante.

2 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 8(1). Subject to the requirements set out in Pt 4 (regs 12-15) and Sch 3 about the determination of infrastructure charges (see PARA 115 post) and in Pt 5 (regs 16-27) and Sch 4 (see PARA 118 post) about the allocation of infrastructure capacity, an infrastructure manager must be responsible for its own management, administration and internal control: reg 8(2). For these purposes, 'allocation' means the allocation of railway infrastructure capacity by an infrastructure manager: Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 2(a); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). For the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante; and for the meaning of 'infrastructure manager' see PARA 109 note 7 ante. As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 3 (regs 8-11) see PARA 109 note 3 ante. The obligation to comply with reg 8 is a duty whose breach may found an action in civil proceedings: see reg 36(1)(a); and PARA 422 post.

3 Ibid reg 8(3). Funds paid for activities relating to the provision of passenger-transport services as public-service remits must be shown separately in the relevant accounts and may not be transferred to activities relating to the provision of other transport services or any other business: reg 8(4). See note 2 supra.

4 Ibid reg 9(1)(a). The obligation to comply with reg 9 is a duty whose breach may found an action in civil proceedings: see reg 36(1)(b); and PARA 422 post.

5 Ibid reg 9(1)(b). See note 4 supra.

6 Ibid reg 9(2). See note 4 supra.

7 Ie where stipulated in the terms of a contract required by ibid reg 16(10) (see PARA 118 post): see reg 9(3).

8 Ibid reg 9(3). See note 4 supra.

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112. Requirement for business plans.

The infrastructure manager¹ must draw up a business plan which is designed for the purposes of ensuring optimal and efficient use and development of the railway infrastructure² and of ensuring financial balance³. Each railway undertaking⁴ must draw up a business plan, which must include its investment and financing programmes, and which is designed for the purpose of ensuring both financial equilibrium and other technical, commercial and financial management objectives⁵. The Office of Rail Regulation⁶ must, at least once a year, request confirmation that these business plans have been produced by the infrastructure manager and by each railway undertaking and each infrastructure manager or railway undertaking, as the case may be, to whom such a request is made is under an obligation to comply with that request⁷.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

3 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 10(1). The plan referred to in the text must include details of investment and financial programmes, and must provide the means by which those objectives are to be achieved: reg 10(2). As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 3 (regs 8-11) see PARA 109 note 3 ante.

4 For the meaning of 'railway undertaking' see PARA 109 note 1 ante.

5 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 10(3). The plan referred to in the text must provide the means by which the objectives set out in reg 10(3) are to be achieved: reg 10(4).

6 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

7 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 10(5). If the Office of Rail Regulation requests information in connection with its functions under reg 10, the Railways Act 1993 s 80 (as amended) (duty of certain persons to furnish information on request: see PARA 34 ante) applies with appropriate modifications: see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 31. Accordingly, for the purposes of reg 31, a request by the Office of Rail Regulation in accordance with reg 10(5) must be treated as a request for information: reg 10(6). As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 ante; and as to the offence of making false statements, etc in giving any information under or for the purposes of those regulations see PARA 418 post.

UPDATE

112 Requirement for business plans

NOTE 7--SI 2005/3049 reg 31 amended: SI 2009/1122.

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113. Requirement for network statements.

The infrastructure manager¹ must, following consultation with all interested parties, develop and publish a network statement² containing the following information³:

- 396 (1) a section setting out the nature of the railway infrastructure⁴ which is available to applicants⁵, and the conditions of access to it⁶;
- 397 (2) details as to where further information may be obtained about the nature of the track access to, and supply of services in, terminals, ports and service facilities⁷;
- 398 (3) a description of the charging principles and tariffs, including details of the charging methodology, exceptions to the charging principles, and discounts⁸;
- 399 (4) details of charges for the supply of those services which are to be supplied by applicants⁹ but which are provided by only one supplier¹⁰;
- 400 (5) a description of the principles and criteria for the allocation of infrastructure capacity, setting out the general capacity characteristics of the infrastructure available and the restrictions on its use, including likely capacity requirements for maintenance¹¹;
- 401 (6) the procedures and deadlines in the capacity allocation process and specific criteria employed in that process¹²; and
- 402 (7) the measures taken by the infrastructure manager to ensure fair treatment of freight services and international services, and in responding to *ad hoc* requests¹³ for infrastructure capacity¹⁴.

The infrastructure manager must publish the network statement not less than four months before the deadline referred to in head (6) above¹⁵; and any fee charged by him for the provision, on request, of a copy of the network statement must not exceed the cost of producing that copy¹⁶.

The infrastructure manager must keep the network statement up to date and modify it as necessary¹⁷.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 For these purposes, 'network statement' means the statement which sets out in detail the general rules, deadlines, procedures and criteria concerning the charging and capacity allocation schemes and which must contain such other information as is required to enable application for infrastructure capacity: Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 2(j); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). 'Charging scheme' means the specific charging rules established in accordance with reg 12 (see PARA 114 post) by the Office of Rail Regulation or, as the case may be, the infrastructure manager: reg 3(1). For the meaning of 'infrastructure capacity' see PARA 109 note 3 ante; for the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante; and for the meaning of 'allocation' see PARA 111 note 2 ante.

3 Ibid reg 11(1).

Where an allocation body by virtue of reg 16(3) (see PARA 118 post) or, as the case may be, a charging body by virtue of reg 12(7) (see PARA 114 post) is responsible for the functions of the infrastructure manager in Pt 4

(regs 12-15) (infrastructure charges: see PARA 114 et seq post) or Pt 5 (regs 16-27) (allocation of infrastructure capacity: see PARA 118 et seq post), that charging body or allocation body must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to include in the network statement the information described in reg 11(4) (see heads (1) to (7) in the text): reg 11(2)(a). A service provider who is not the infrastructure manager must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to include in the network statement the information described in reg 11(4)(b) (see head (2) in the text) and, where applicable, reg 11(4)(d) (see head (4) in the text): reg 11(3)(a). If the information required under reg 11(2) or reg 11(3) is not provided to the satisfaction of the infrastructure manager, he may refer the matter to the Office of Rail Regulation for a determination as to whether additional information must be supplied: reg 11(8). Where a matter is referred to the Office of Rail Regulation in this way, it is the duty of that Office to make the determination within such period as is reasonable in all the circumstances, and any such determination is binding on all parties: reg 11(9). For the meanings of 'allocation body' and 'charging body' see PARA 109 note 7 ante; and for the meaning of 'service provider' see PARA 109 note 12 ante. As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 ante; and as to the offence of making false statements, etc in giving any information under or for the purposes of those regulations see PARA 418 post.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 3 (regs 8-11) see PARA 109 note 3 ante.

4 For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

5 For the meaning of 'applicant' see PARA 110 note 1 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 11(1), (4)(a).

7 Ibid reg 11(1), (4)(b). The text refers to any of the terminals, ports and service facilities to which access may be obtained pursuant to regs 6-7 (see PARA 109 ante): see reg 11(4)(b).

8 Ibid reg 11(1), (4)(c).

9 I.e. those services listed in ibid reg 7, Sch 2 (see PARA 109 ante): see reg 11(4)(d).

10 Ibid reg 11(1), (4)(d).

11 Ibid reg 11(1), (4)(e).

12 Ibid reg 11(1), (4)(f). The information required by head (6) in the text includes, in particular:

- 81 (1) the procedures according to which applicants can request infrastructure capacity from the infrastructure manager (reg 11(4)(f)(i));
- 82 (2) the information to be provided by applicants (reg 11(4)(f)(ii));
- 83 (3) the timetable for the application and allocation process (reg 11(4)(f)(iii));
- 84 (4) the principles governing the co-ordination process, in particular the arrangement of international train paths, and the effect that modification of such paths might have on other infrastructure managers (reg 11(4)(f)(iv));
- 85 (5) information about the procedures established in accordance with reg 17(4) (see PARA 119 post) for the allocation of infrastructure capacity at an international level, including information about the membership and methods of operation of any representative groups, and all relevant criteria used to assess and allocate infrastructure capacity which crosses more than one network (reg 11(4)(f)(v));
- 86 (6) the dispute resolution procedure established in accordance with reg 20(5) (see PARA 122 post) (reg 11(4)(f)(vi));
- 87 (7) details of any section of railway infrastructure which has been designated for use by specified types of rail services in accordance with reg 22 (see PARA 124 post) (reg 11(4)(f)(vii));
- 88 (8) the procedures to be followed for congested infrastructure, and any priority criteria for the allocation of congested infrastructure set in accordance with reg 23(5) and reg 23(6) (see PARA 125 post) (reg 11(4)(f)(viii));
- 89 (9) the findings of any capacity enhancement plan completed in accordance with reg 25 (see PARA 127 post) (reg 11(4)(f)(ix));

- 90 (10) details of restrictions on the use of infrastructure (reg 11(4)(f)(x));
- 91 (11) the threshold quota to be applied by the infrastructure manager in requiring a train path to be surrendered under reg 26(1) (see PARA 128 post) (reg 11(4)(f)(xi)); and
- 92 (12) the conditions relating to previous levels of utilisation of capacity to be taken into account by the infrastructure manager in determining priorities in accordance with reg 26(3) (see PARA 128 post) (reg 11(4)(f)(xii)).

For these purposes, 'coordination' means the process through which the allocation body and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity: Directive 2001/14/EC (OJ L75, 15.03.2001, p 29) art 2(e); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). For the meaning of 'train path' see PARA 109 note 3 ante; for the meaning of 'network' see PARA 109 note 7 ante; for the meaning of 'congested infrastructure' see PARA 125 note 4 post; and for the meaning of 'capacity enhancement plan' see PARA 127 note 3 post.

13 For the meaning of '*ad hoc* request' see PARA 123 note 4 post.

14 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 11(1), (4)(g).

15 Ibid reg 11(6). The deadline referred to in the text is the deadline for applications for infrastructure capacity as described, pursuant to head (6) in the text, under reg 11(4)(f)(iii) (see note 12 head (3) infra): see reg 11(6).

16 Ibid reg 11(7).

17 Ibid reg 11(5).

Where an allocation body by virtue of reg 16(3) (see PARA 118 post) or, as the case may be, a charging body by virtue of reg 12(7) (see PARA 114 post) is responsible for the functions of the infrastructure manager in Pt 4 (infrastructure charges: see PARA 114 et seq post) or Pt 5 (allocation of infrastructure capacity: see PARA 118 et seq post), that charging body or allocation body must provide the infrastructure manager with such information as is necessary, and a service provider who is not the infrastructure manager must provide the infrastructure manager with such information as is necessary, to enable that infrastructure manager to keep the network statement up to date in accordance with reg 11(5): see reg 11(2)(b), (3)(b). As to referrals which may be made by the infrastructure manager to the Office of Rail Regulation for a determination as to whether additional information must be supplied for these purposes see note 3 supra.

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(C) INFRASTRUCTURE CHARGES

114. Establishment, determination and collection of charges.

The infrastructure manager¹ must charge fees for use of the railway infrastructure² for which he is responsible³, and he must utilise such fees as are received to fund his business⁴.

The Office of Rail Regulation⁵ must⁶ establish both the charging framework and the specific charging rules governing the determination of the fees to be so charged⁷, and the infrastructure manager must⁸:

- 403 (1) in accordance with not only the charging framework and the specific charging rules but also the principles of access charges and the exceptions to them⁹, determine the fees to be charged for use of the infrastructure¹⁰; and
- 404 (2) collect those fees¹¹.

However, where the railway infrastructure to which the charge relates is a rail link facility¹², the Secretary of State¹³ must establish the charging framework through the development agreement¹⁴, and the infrastructure manager must¹⁵:

- 405 (a) establish the specific charging rules governing the determination of the fees to be charged in accordance with the obligation to do so which is placed on the infrastructure manager¹⁶;
- 406 (b) determine the fees to be charged for the use of the infrastructure in accordance with the charging framework, the specific charging rules and the principles of access charges and the exceptions to them¹⁷; and
- 407 (c) collect those fees¹⁸.

Applicants¹⁹ must²⁰ pay such fees as are charged by the infrastructure manager for use of the railway infrastructure²¹. However, the infrastructure manager must be able to justify that the charges invoiced to each railway undertaking for access to the infrastructure comply with the methodology, rules and, where applicable, scales laid down in the network statement²². Furthermore, infrastructure managers must co-operate to achieve the efficient operation of train services which cross more than one infrastructure network²³ and they may establish such joint organisations as may be appropriate to enable such co-operation to be achieved²⁴.

The infrastructure manager must respect the commercial confidentiality of information provided to it by applicants for infrastructure capacity²⁵.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante. An infrastructure manager responsible for any of the functions of the infrastructure manager described in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 4 (regs 12-15) (see also PARA 115 et seq post) and reg 12(2), Sch 3 (as to which see PARA 115 post) must, in its legal form, organisation or decision-making functions, be independent of any railway undertaking and, where not so independent, that infrastructure manager must ensure that the functions described in Pt 4 and Sch 3 are performed by a charging body that is so independent: reg 12(7). However, the separation so required does not apply to the function of the collection of fees charged in accordance with reg 12(2)(b) (see head (2) in the text) and reg 12(4)(c) (see head (c) in the text): reg 12(8). For the meaning of 'railway undertaking' see PARA 109 note 1 ante; and for the meaning of

'charging body' see PARA 109 note 7 ante. The obligation to comply with reg 12(7) is a duty whose breach may found an action in civil proceedings: see reg 36(1)(c); and PARA 422 post.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 4 see PARA 109 note 3 ante.

2 For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

3 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 12(5)(a). Regulation 12(5) is subject to the provisions of reg 12(1)-(4) (as to which see the text and notes 5-18 infra): see reg 12(5).

4 Ibid reg 12(5)(b). See note 3 supra.

5 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

6 Ie subject to the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 12(3) (see the text and note 12 infra): see reg 12(1).

7 Ibid reg 12(1). The text refers to the fees to be charged in accordance with reg 12(5) (as to which see the text and notes 1-4 supra): see reg 12(1).

8 Ie subject to ibid reg 12(3) (see the text and note 12 infra) and reg 12(7) (see note 1 supra): see reg 12(2).

9 Ie the principles and exceptions set out in ibid Sch 3 (as to which see PARA 115 post): see reg 12(2)(a).

10 Ibid reg 12(2)(a).

11 Ibid reg 12(2)(b).

12 Ibid reg 12(3). Where the condition set out in the text applies, reg 12(1), (2) (as to which see the text and notes 1-11 supra) does not apply: see reg 12(3).

For these purposes, 'rail link facility' means a railway facility which is used wholly or partly for the purposes of or in connection with the provision of services for the carriage of passengers or goods on the rail link (see the Channel Tunnel Rail Link Act 1996 s 17(5); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1)), but including any rail maintenance depot which provides maintenance services primarily for rail vehicles providing services on the rail link and to which the rail access is via that rail link (reg 3(1)). 'Rail link' means the railway between St Pancras, in London, and the Channel Tunnel portal at Castle Hill, Folkestone, in Kent, authorised to be constructed by the Channel Tunnel Rail Link Act 1996 s 1(1), together with its associated works, facilities and installations, and the railway comprised in works which connect that railway with the Chatham to Victoria Line, together with its associated works, facilities and installations: see s 56(1); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1).

13 As to the Secretary of State see PARA 35 ante.

14 For these purposes, 'development agreement' means an agreement to which the Secretary of State is a party and under which another party has responsibilities in relation to the design, construction, financing or maintenance of the rail link: see the Channel Tunnel Rail Link Act 1996 s 56(1); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1).

15 Ie subject to ibid reg 12(7) (as to which see note 1 supra): see reg 12(4).

16 Ibid reg 12(4)(a). The text refers to the determination of the fees to be charged in accordance with reg 12(5) (as to which see the text and notes 1-4 supra): see reg 12(4)(a).

17 Ibid reg 12(4)(b). The text refers to the principles and exceptions set out in Sch 3 (as to which see PARA 115 post): see reg 12(4)(b).

18 Ibid reg 12(4)(c).

19 For the meaning of 'applicant' see PARA 110 note 1 ante.

20 Ie subject to the right of appeal to the Office of Rail Regulation provided in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 29 (see PARA 61 ante): see reg 12(6).

21 Ibid reg 12(6).

22 Ibid reg 12(9). Where information about the charges imposed is requested by either the Secretary of State or the Office of Rail Regulation, the infrastructure manager must supply the information requested: reg 12(9). For the meaning of 'network statement' see PARA 113 note 2 ante.

23 Ibid reg 12(10). For the purposes set out in the text, infrastructure managers must, in particular, aim to guarantee the optimum competitiveness of international rail freight: see reg 12(10). For the meaning of 'network' see PARA 109 note 7 ante.

24 Ibid reg 12(11). Any such co-operation or joint organisations as are mentioned in the text are bound by the rules set out in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 12(11).

25 Ibid reg 12(12). For the meaning of 'infrastructure capacity' see PARA 109 note 3 ante. As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 ante. The obligation to comply with reg 12(12) is a duty whose breach may found an action in civil proceedings: see reg 36(1)(c); and PARA 422 post.

UPDATE

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NOTE 14--Definition of 'development agreement' amended: Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 s 5.

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115. Principles of access charging and the exceptions.

The following constitute the principles of access charging¹:

- 408 (1) the infrastructure manager² must ensure that the application of the charging scheme³ both complies with the rules set out in the network statement⁴ and results in equivalent and non-discriminatory charges for different railway undertakings⁵ that perform services of an equivalent nature in a similar part of the market⁶;
- 409 (2) the calculation of the fee may in particular take into account the mileage, composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure⁷;
- 410 (3) except where specific arrangements are made for higher charges on the basis of specific investment projects bearing long-term costs⁸, the infrastructure manager must ensure that the charging system⁹ in use is based on the same principles over the whole of his network¹⁰;
- 411 (4) the charges for the minimum access package and track access to service facilities to which applicants are entitled¹¹ must be set at the cost that is directly incurred as a result of operating the train service¹²;
- 412 (5) with the exception of head (6) and head (9) below, the supply of services to which applicants are entitled¹³ is not subject to the principles of access charging¹⁴;
- 413 (6) in setting the charge for the supply of services referred to in head (5) above, account must be taken of the competitive situation of rail transport¹⁵;
- 414 (7) if the additional or ancillary services to which applicants are entitled¹⁶ are offered by only one supplier, the charge imposed for the supply of those services must relate to the cost of providing the service, calculated on the basis of the actual level of use¹⁷;
- 415 (8) the infrastructure charge may include a charge to reflect the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion¹⁸;
- 416 (9) the charges referred to in head (4) and head (8) above may be averaged over a reasonable spread of train services and times, but the relative magnitudes of the infrastructure charges must be related to the costs attributable to the services¹⁹.

The following are exceptions to the charging principles:

- 417 (a) in order to obtain full recovery of the costs incurred, the infrastructure manager, with the approval of the Office of Rail Regulation²⁰ under an access charges review²¹ (or, in the case of a rail link facility²², the Secretary of State²³ through the development agreement²⁴) may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of international rail freight²⁵;
- 418 (b) for specific investment projects completed either since 15 March 1988²⁶ or following the introduction of the access and management regime from 28 November 2005²⁷, the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of the project²⁸;

- 419 (c) an infrastructure manager's average and marginal charges for equivalent uses of his infrastructure must be comparable, and comparable services in the same market segment must be subject to the same charges²⁹.

Subject to specified provisions of the EC Treaty³⁰ which implement the general requirement concerning competition³¹ and subject to head (4) above, any discount on the charges levied on a user of railway infrastructure³² by the infrastructure manager, for any service, must comply with the following principles³³:

- 420 (i) except where head (ii) below applies, discounts must be limited to the actual saving of the administrative cost to the infrastructure manager and, in determining the level of discount to be applied, no account may be taken of cost savings already incorporated in the charge levied³⁴;
- 421 (ii) the infrastructure manager may introduce schemes available to all users of the infrastructure, with reference to specified traffic flows, granting time limited discounts to encourage the development of new rail services, or encouraging the use of considerably under-utilised lines³⁵;
- 422 (iii) the discounts available must be in accordance with the access charges review (or, in the case of a rail link facility, the development agreement)³⁶;
- 423 (iv) discounts may relate only to charges levied for a specified infrastructure section³⁷; and
- 424 (v) similar discount schemes must be applied to similar services³⁸.

1 As to the requirement for access charging see PARA 114 ante.

2 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

3 For the meaning of 'charging scheme' see PARA 113 note 2 ante.

4 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 12, Sch 3 para 1(1) (a). The text refers to the network statement produced in accordance with reg 11 (see PARA 113 ante): see Sch 3 para 1(1)(a). For the meaning of 'network statement' see PARA 113 note 2 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 4 (regs 12-15) see PARA 109 note 3 ante.

5 For the meaning of 'railway undertaking' see PARA 109 note 1 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 3 para 1(1)(b).

7 Ibid Sch 3 para 1(2).

8 Ie in accordance with ibid para 3 (see head (b) in the text): Sch 3 para 1(3).

9 For these purposes, 'charging system' means the system established by an infrastructure manager to determine access charges: ibid reg 3(1).

10 Ibid Sch 3 para 1(3). For the meaning of 'network' see PARA 109 note 7 ante.

11 Ie as referred to in ibid reg 7(1), Sch 2 paras 1-2 (as to which see PARA 110 ante): see Sch 3 para 1(4). For the meaning of 'applicant' see PARA 110 note 1 ante.

12 Ibid Sch 3 para 1(4).

13 Ie the supply of services referred to in ibid Sch 2 para 2 (see PARA 110 ante): Sch 3 para 1(5).

14 Ibid Sch 3 para 1(5). The text refers to the principles of access charging set out in Sch 3 para 1: see Sch 3 para 1(5).

15 Ibid Sch 3 para 1(6).

- 16 le the additional services referred to in *ibid* Sch 2 para 3 (see PARA 110 ante) or the ancillary services referred to in Sch 2 para 4 (see PARA 110 ante): see Sch 3 para 1(7).
- 17 *Ibid* Sch 3 para 1(7).
- 18 *Ibid* Sch 3 para 1(8). The charge referred to in the text is known for some purposes as a 'scarcity charge': see reg 25(5); and PARA 127 post.
- 19 *Ibid* Sch 3 para 1(9).
- 20 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.
- 21 For these purposes, 'access charges review' means a review of access charges carried out in accordance with the Railways Act 1993 s 19A, Sch 4A (as added and amended) (as to which see PARA 171 et seq post): Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1).
- 22 For the meaning of 'rail link facility' see PARA 114 note 12 ante.
- 23 As to the Secretary of State see PARA 35 ante.
- 24 For the meaning of 'development agreement' see PARA 114 note 14 ante.
- 25 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 3 para 2(1). The effect of Sch 3 para 2(1) must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear: Sch 3 para 2(2). The charging system must respect the productivity increases achieved by applicants: Sch 3 para 2(3). If an infrastructure manager intends to modify the essential elements of the charging system referred to in Sch 3 para 2, that infrastructure manager must make such modifications public at least three months in advance of the modification taking effect: Sch 3 para 5.
- See *R (on the application of Great North Eastern Railway Ltd) v Office of Rail Regulation* [2006] EWHC 1942 (Admin), [2006] All ER (D) 414 (Jul) (access charging scheme for competitive entry did not discriminate unlawfully between franchise operators and open access operators).
- 26 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 3 para 3(1)(a).
- 27 *Ibid* Sch 3 para 3(1)(b). The date mentioned in the text refers to the date of the coming into force of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 (as to which see reg 1): see Sch 3 para 3(1)(b).
- 28 *Ibid* Sch 3 para 3(1). However, for Sch 3 para 3(1) to apply: (1) the effect of the higher charges must be to increase the efficiency or cost-effectiveness of the project (Sch 3 para 3(2)(a)); and (2) the project could not otherwise have been undertaken without the prospect of such higher charges (Sch 3 para 3(2)(b)). A charging arrangement to which Sch 3 para 3(1) applies may incorporate agreements on the sharing of the risk associated with new investments: Sch 3 para 3(3).
- 29 *Ibid* Sch 3 para 4(1). In such a case, the network statement produced by the infrastructure manager in accordance with reg 11 (see PARA 113 ante) must demonstrate that the charging system meets the requirements in Sch 3 para 4(1) in so far as this can be done without the disclosure of commercially confidential information: Sch 3 para 4(2).
- 30 For these purposes, 'Treaty' means the consolidated versions of the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) and of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty'): see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1).
- 31 le EC Treaty arts 81-82, 86, 87 (arts 81-82, 86, 87 formerly arts 85-86, 90, 92; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) (see COMPETITION vol 18 (2009) PARA 26 et seq).
- 32 For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.
- 33 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 3 para 6(1).
- 34 *Ibid* Sch 3 para 6(2).
- 35 *Ibid* Sch 3 para 6(3).
- 36 *Ibid* Sch 3 para 6(4).

37 Ibid Sch 3 para 6(5).

38 Ibid Sch 3 para 6(6).

UPDATE

115 Principles of access charging and the exceptions

NOTE 28--SI 2005/3049 Sch 3 para 3(2)(a) amended: SI 2009/1122.

TEXT AND NOTES 30-38--SI 2005/3049 Sch 3 para 6(1), (3) amended: SI 2009/1122.

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116. Infrastructure costs and accounts.

The Office of Rail Regulation¹ through an access charges review² (or, in the case of a rail link facility³, the Secretary of State⁴ through the development agreement⁵) must lay down conditions, including where appropriate advance payments, to ensure that, under normal business conditions and over a reasonable time period, the accounts of an infrastructure manager⁶ must at least balance:

- 425 (1) income from infrastructure charges⁷;
- 426 (2) surpluses from other commercial activities⁸; and
- 427 (3) public funds⁹,

with infrastructure expenditure¹⁰. The infrastructure manager must, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges¹¹.

1 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

2 For the meaning of 'access charges review' see PARA 115 note 21 ante. As to the requirement for access charging see PARA 114 ante.

3 For the meaning of 'rail link facility' see PARA 114 note 12 ante.

4 As to the Secretary of State see PARA 35 ante.

5 For the meaning of 'development agreement' see PARA 114 note 14 ante.

6 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

7 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 13(1)(a).

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 4 (regs 12-15) see PARA 109 note 3 ante.

8 Ibid reg 13(1)(b).

9 Ibid reg 13(1)(c).

10 Ibid reg 13(1).

11 Ibid reg 13(2). The responsibility for ensuring that the requirements set out in the text are implemented lies with the Office of Rail Regulation through the access charges review (or, in the case of a rail link facility, the Secretary of State through the development agreement): see reg 13(3).

UPDATE

116 Infrastructure costs and accounts

NOTE 11--SI 2005/3049 reg 13(3) substituted: SI 2009/1122.

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117. Performance schemes and reservation charges.

The infrastructure manager¹ must establish a performance scheme as part of the charging system² to encourage railway undertakings³ and the infrastructure manager to minimise disruption and improve the performance of the railway network⁴. Such a performance scheme may include:

- 428 (1) penalties for actions which disrupt the operation of the rail network⁵;
- 429 (2) compensation for undertakings which suffer from disruption⁶; and
- 430 (3) bonuses that reward better than planned performance⁷.

The basic principles of the performance scheme must apply in a non-discriminatory manner throughout the network to which that scheme relates⁸.

The infrastructure manager may levy an appropriate charge for capacity⁹ that is requested but not used, and the imposition of this charge must provide incentives for efficient use of capacity¹⁰.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 For the meaning of 'charging system' see PARA 115 note 9 ante.

3 For the meaning of 'railway undertaking' see PARA 109 note 1 ante.

4 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 14(1). For the meaning of 'network' see PARA 109 note 7 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 4 (regs 12-15) see PARA 109 note 3 ante.

5 Ibid reg 14(2)(a).

6 Ibid reg 14(2)(b).

7 Ibid reg 14(2)(c).

8 Ibid reg 14(3).

9 For the meaning of 'infrastructure capacity' see PARA 109 note 3 ante.

10 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 15(1). The infrastructure manager must provide, to any interested party, information about the infrastructure capacity allocated to applicants: reg 15(2). For the meaning of 'applicant' see PARA 110 note 1 ante. As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 ante; and as to the offence of making false statements, etc in giving any information under or for the purposes of those regulations see PARA 418 post.

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(D) ALLOCATION OF INFRASTRUCTURE CAPACITY

118. Capacity allocation framework and process.

The Office of Rail Regulation¹ (or, in the case of a rail link facility², the Secretary of State³) may establish a framework for the allocation of infrastructure capacity⁴.

The infrastructure manager⁵ is responsible for the establishment of specific capacity allocation rules and for the process of allocating infrastructure capacity in respect of the infrastructure for which he has responsibility⁶. Any applicant⁷ may apply to the infrastructure manager for the allocation of infrastructure capacity⁸.

The infrastructure manager must ensure that the allocation process is conducted in accordance with the specified timetable⁹, which sets out both the date of timetable change¹⁰ and a timetable for the production of the working timetable¹¹, and he must:

- 431 (1) ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis¹²;
- 432 (2) ensure that the contracts setting out the rights and obligations of the parties¹³ are non-discriminatory, transparent, and in accordance with the statutory requirements¹⁴; and
- 433 (3) respect the confidentiality of information supplied to him as part of the capacity allocation process¹⁵.

He must not allocate capacity in the form of specific train paths for any period in excess of one working timetable period¹⁶.

A contract, either in the form of a framework agreement¹⁷ or any other type of contract, setting out the rights and obligations of the parties, must be concluded between the infrastructure manager and any applicant to whom infrastructure capacity is allocated before that infrastructure capacity is utilised¹⁸. An applicant who has been granted capacity by the infrastructure manager, whether that capacity is in the form of a framework agreement¹⁹ specifying the characteristics of the infrastructure granted²⁰ or specific infrastructure capacity in the form of a train path²¹, must not trade that capacity with another applicant or transfer it to another undertaking or service²².

1 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

2 For the meaning of 'rail link facility' see PARA 114 note 12 ante.

3 As to the Secretary of State see PARA 35 ante.

4 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 16(1). The framework must respect the requirements for management independence stipulated in reg 8 (see PARA 111 ante); see reg 16(1). For the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante; and for the meaning of 'allocation' see PARA 111 note 2 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

5 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 16(2).

An infrastructure manager responsible for any of the functions of the infrastructure manager described in Pt 5 and Sch 4 (see further PARA 119 et seq post) must, in its legal form, organisation or decision-making functions, be independent of any railway undertaking and, where he is not so independent, that infrastructure manager must ensure that the functions of the infrastructure manager described in Pt 5 are performed by an allocation body that is so independent: see reg 16(3). For the meaning of 'allocation body' see PARA 109 note 7 ante; and for the meaning of 'railway undertaking' see PARA 109 note 1 ante. The obligation to comply with reg 16(3) is a duty whose breach may found an action in civil proceedings: see reg 36(1)(d); and PARA 422 post.

7 For the meaning of 'applicant' see PARA 110 note 1 ante.

8 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 16(4). However, any person who trades in capacity contrary to the provisions of reg 16(6) (see the text and notes 19-22 infra) is not entitled to apply for capacity under reg 16(4) for the period of the working timetable period to which the allocation of capacity transferred related: reg 16(7). For these purposes, 'working timetable period' means the calendar year commencing at midnight on the second Saturday in December: reg 3(1). 'Working timetable' means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force: Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 2(m); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). See further the text and notes 9-11 infra. As to applications for infrastructure capacity crossing more than one network see PARA 119 post; and as to the procedure for applications for infrastructure capacity under the annual timetable process see PARA 121 post.

9 Ibid reg 16(5). The text refers to the timetable set out in reg 16(5), Sch 4 (as to which the text and notes 10-11 infra): see reg 16(5).

10 The working timetable must be established once per calendar year, and the change of working timetable must take place at midnight on the second Saturday in December: ibid Sch 4 para 1(1). Where a change or adjustment to the working timetable is carried out after the winter (in particular to take account, where appropriate, of changes in regional passenger traffic timetables) it must take place at midnight on the second Saturday in June: Sch 4 para 1(2). However, the infrastructure manager may agree different dates to those stipulated in Sch 4 para 1(1) and in Sch 4 para 1(2) and, in this case, must inform the European Commission if international traffic may be affected: Sch 4 para 1(4). Further changes to the working timetable may be made at such other intervals as are required: Sch 4 para 1(3).

11 The final date for receipt of requests for capacity to be incorporated into the working timetable must be no more than 12 months in advance of the entry into force of the working timetable described in ibid Sch 4 para 1 (as to which see note 10 supra): Sch 4 para 2(1). No later than 11 months before the working timetable comes into force, the infrastructure managers must ensure that provisional international train paths have been established in co-operation with other relevant infrastructure managers or, as the case may be, allocation bodies, in accordance with reg 17 (as to which see PARA 119 post): Sch 4 para 2(2). Infrastructure managers must ensure that, so far as possible, provisional international train paths established in accordance with Sch 4 para 2(2) are adhered to during the subsequent allocation process: Sch 4 para 2(3). No later than four months after the deadline for submission of bids by applicants, the infrastructure manager must prepare a draft working timetable: Sch 4 para 2(4). For the meaning of 'train path' see PARA 109 note 3 ante.

12 Ibid reg 16(11)(a). In reserving infrastructure capacity for the purposes of scheduled track maintenance, as requested under reg 19(5) (as to which see PARA 121 post), the infrastructure manager must take into account the effect of that reservation on applicants: reg 16(12).

13 Ie the contracts referred to in ibid reg 16(10) (see the text and notes 17-18 infra): see reg 16(11).

14 Ibid reg 16(11)(b). The text refers to contracts being in accordance with the requirements of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 16(11)(b).

15 Ibid reg 16(11)(c). As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 ante. The obligation to comply with reg 16(11)(c) is a duty whose breach may found an action in civil proceedings: see reg 36(1)(d); and PARA 422 post.

16 Ibid reg 16(9).

17 For the meaning of 'framework agreement' see PARA 120 note 3 post.

18 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 16(10). The obligation to comply with reg 16(10) is a duty whose breach may found an action in civil proceedings: see reg 36(1)(d); and PARA 422 post.

19 le made in accordance with *ibid* reg 18 (as to which see PARA 120 post): see reg 16(6).

20 *Ibid* reg 16(6)(a).

21 *Ibid* reg 16(6)(b).

22 *Ibid* reg 16(6). The use of capacity by a railway undertaking on behalf of an applicant who is not a railway undertaking, in order to further the business of that applicant, is not a transfer for the purposes of reg 16(6): reg 16(8).

UPDATE

118 Capacity allocation framework and process

NOTE 8--An applicant applying for infrastructure capacity with a view to operating an international passenger service must give notice of that fact to the infrastructure manager concerned and to the Office of Rail Regulation and provide them with such information as the Office of Rail Regulation may reasonably require or prescribe: SI 2005/3049 reg 16(4A) (reg 16(4A), (4B) added by SI 2009/1122). When the Office of Rail Regulation receives notice from an applicant under SI 2005/3049 reg 16(4A), it must provide any competent authority that has awarded a rail passenger service defined in a relevant public service contract, any railway undertaking which is a relevant public service operator and any other competent authority with a right to limit access along the route of the international passenger service notified under reg 16(4A) with a copy of the information in relation to that service provided to it in accordance with reg 16(4A): SI 2005/3049 reg 16(4B).

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119. Co-operation where capacity crosses more than one network.

In the case of applications for infrastructure capacity¹ crossing more than one network², infrastructure managers³ must: (1) co-operate to enable the efficient creation and allocation⁴ of infrastructure capacity pursuant to a request for capacity crossing more than one network⁵; and (2) before consulting on the draft working timetable⁶, agree with the other relevant infrastructure managers which international train paths are to be included in that draft working timetable⁷.

The infrastructure managers must establish such procedures as are appropriate⁸ to enable the co-operation referred to in head (1) above to take place, and such procedures must include representatives of the infrastructure managers whose allocation decisions have an impact on one or more infrastructure managers⁹. The procedures so established may permit appropriate representatives of infrastructure managers outside the European Community to be associated with these procedures¹⁰, but where this happens the infrastructure managers must inform the European Commission and invite representatives to attend appropriate meetings as an observer¹¹.

At any meeting or other activity undertaken to facilitate the allocation of infrastructure capacity across more than one network, decisions may only be taken by representatives of the relevant infrastructure managers¹².

1 As to applications for infrastructure capacity generally see PARA 118 ante. For the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante.

2 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 17(1). For the meaning of 'network' see PARA 109 note 7 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

3 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

4 For the meaning of 'allocation' see PARA 111 note 2 ante.

5 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 17(2)(a). In acting in accordance with reg 17(2), the infrastructure managers must assess the need for and, where necessary, propose and organise international train paths in such a way as to enable *ad hoc* capacity for freight services to be granted in accordance with reg 21 (as to which see PARA 123 post): reg 17(8). The prearranged train paths referred to in reg 17(8) must be made available to applicants through any infrastructure manager who participates in the international co-ordination of train paths referred to in reg 17: reg 17(9). For the meaning of 'applicant' see PARA 110 note 1 ante; and for the meaning of 'train path' see PARA 109 note 3 ante.

6 For the meaning of 'working timetable' see PARA 118 note 8 ante. As to the draft working timetable see PARA 118 note 11 ante.

7 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 17(2)(b). See note 5 supra. The international train paths referred to in reg 17(2)(b) may only be adjusted if absolutely necessary: reg 17(3).

8 In accordance with the requirements set out in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049: see reg 17(4).

9 Ibid reg 17(4).

10 Ibid reg 17(5).

11 Ibid reg 17(6).

12 Ibid reg 17(7).

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120. Framework agreements.

An infrastructure manager¹ may² enter into a framework agreement³ with an applicant for the purpose of specifying the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period⁴. A framework agreement made in this way⁵ is in principle to be for a period of up to five years⁶, subject to the conditions that: (1) a framework agreement for a period of between five and ten years must be justified by the existence of commercial contracts, specialised investments or risks⁷; and (2) a framework agreement for a period in excess of ten years may only be made in exceptional cases, in particular where there is large-scale and long-term investment, and particularly where such investment is covered by contractual commitments⁸.

The applicant who is a party to a framework agreement may apply for the allocation of capacity in accordance with the terms of the agreement⁹; but the effect of a framework agreement must not be such as to preclude the use of the railway infrastructure that is subject to that framework agreement by other applicants or services¹⁰. A framework agreement must contain terms permitting the amendment or limitation of any condition contained in that framework agreement if such amendment or limitation would enable better use to be made of the railway infrastructure¹¹; and such an agreement may contain penalties applicable on modification or termination of the agreement by any party¹².

Whilst respecting commercial confidentiality, the general nature of each framework agreement must be made available by the infrastructure manager to any interested party¹³.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 le subject to the requirements of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 18 and without prejudice to the consolidated versions of the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) and of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty': see PARA 115 note 30 ante) arts 81, 82 and 86 (arts 81, 82 and 86 formerly arts 85, 86 and 90; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) (see COMPETITION vol 18 (2009) PARA 26 et seq): see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 18(1).

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

3 For these purposes, 'framework agreement' means either an access contract described in the Railways Act 1993 s 18(2)(a), which satisfies one of the conditions in s 18(1) (as amended) (contracts requiring approval of the Office of Rail Regulation: see PARA 102 ante), or a legally binding agreement made other than in pursuance of s 17 (as amended) (directions from the Office of Rail Regulation for facility owner to enter into an access contract: see PARA 103 ante) or s 18 (as amended), setting out the rights and obligations of an applicant and the infrastructure manager or, as the case may be, allocation body in relation to the infrastructure capacity to be allocated and the charges to be levied over a period in excess of one working timetable period: Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). For the meaning of 'allocation' see PARA 111 note 2 ante; for the meaning of 'allocation body' see PARA 109 note 7 ante; for the meaning of 'applicant' see PARA 110 note 1 ante; for the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante; and for the meaning of 'working timetable period' see PARA 118 note 8 ante. As to the charges to be levied for access to the infrastructure see PARA 114 et seq ante; and as to applications for the allocation of infrastructure capacity see PARA 118 et seq ante.

Regulation 18 is without prejudice to the Railways Act 1993 s 18 (as amended) in the case of a framework agreement which is an access contract to which s 18 (as amended) applies: Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 18(11). Except where the Channel Tunnel Rail Link Act 1996

s 17(3) applies, a framework agreement in relation to a rail link facility is not subject to the approval of the Office of Rail Regulation under the Railways Act 1993 s 18 (as amended), and nothing in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 has the effect of applying any of the Railways Act 1993 ss 17-22C (as added and amended) (directions regarding access contracts: see PARA 102 et seq ante) to a rail link facility: Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 18(12). For the meaning of 'rail link facility' see PARA 114 note 12 ante.

4 Ibid reg 18(1). Whilst seeking to meet the legitimate commercial needs of the applicant, a framework agreement must not specify any train path in detail: reg 18(3). For the meaning of 'train path' see PARA 109 note 3 ante.

5 le made in accordance with ibid reg 18(1) (see the text and notes 1-4 supra): see reg 18(7).

6 Ibid reg 18(7).

7 Ibid reg 18(8).

8 Ibid reg 18(9).

9 Ibid reg 18(2).

10 Ibid reg 18(4).

11 Ibid reg 18(5).

12 Ibid reg 18(6).

13 Ibid reg 18(10).

UPDATE

120 Framework agreements

NOTE 3--Channel Tunnel Rail Link Act 1996 s 17(3) repealed: Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 s 2. SI 2005/3049 reg 18(12), (13) substituted for reg 18(12): SI 2009/1122.

NOTE 4--SI 2005/3049 reg 18(3) amended: SI 2009/1122.

TEXT AND NOTES 6-8--SI 2005/3049 reg 18(7), (8) amended: SI 2009/1122. Subject to SI 2005/3049 reg 18(9A), a framework agreement in relation to infrastructure which has been designated in accordance with reg 22(2) (see PARA 124) may be for a period of up to fifteen years where there is a substantial and long-term investment justified by the applicant: SI 2005/3049 reg 18(9) (substituted by SI 2009/1122). A designated infrastructure framework agreement may be for a period in excess of fifteen years in exceptional circumstances, in particular where there is a large-scale and long-term investment and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan: SI 2005/3049 reg 18(9A) (reg 18(9A)-(9C) added by SI 2009/1122). An application for a designated infrastructure framework agreement to which SI 2005/3049 reg 18(9), (9A) applies may specify the capacity characteristics, including the frequency, volume and quality of the train paths, to be provided to the applicant for the duration of the framework agreement in sufficient detail to ensure that these are clearly established: SI 2005/3049 reg 18(9B). The infrastructure manager may reduce capacity reserved under the terms of a designated infrastructure framework agreement to which s 18(9), (9A) applies where, over a continuous period of at least one month, that capacity has been used less than the threshold quota stipulated in the network statement: SI 2005/3049 reg 18(9C).

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121. Applications for infrastructure capacity under the annual timetable process.

Applicants¹ may submit a request to the infrastructure manager² for an agreement granting rights to use railway infrastructure³ against a charge⁴.

An applicant wishing to apply for infrastructure capacity⁵ must submit an application to the infrastructure manager in accordance with the timetable for the allocation process⁶. Applicants may submit a request to a single infrastructure manager for infrastructure capacity crossing more than one network⁷ and, where such an application is made, that infrastructure manager is permitted to act on behalf of that applicant in seeking from other infrastructure managers the infrastructure capacity requested⁸.

Requests for infrastructure capacity to enable maintenance of the network to be carried out must be submitted in accordance with the specified timetable⁹.

1 For the meaning of 'applicant' see PARA 110 note 1 ante.

2 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

3 For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

4 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 19(1). The text refers to granting rights to use railway infrastructure against a charge as provided for in Pt 4 (regs 12-15) (see PARA 114 et seq ante): see reg 19(1). As to requests which may be submitted for ad hoc requests to use railway infrastructure see PARA 123 post.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

5 For the meaning of 'infrastructure capacity' see PARA 109 note 3 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 19(2). The text refers to the timetable for the allocation process set out in Sch 4 (as to which see PARA 118 ante): see reg 19(2). As to applications for the allocation of infrastructure capacity see PARA 118 et seq ante; and as to the offence of making false statements, etc when making any application under or for the purposes of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 418 post.

7 For the meaning of 'network' see PARA 109 note 7 ante.

8 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 19(3). The infrastructure manager must ensure, however, that, for infrastructure capacity crossing more than one network, applicants may apply direct to any joint body established by the infrastructure managers: reg 19(4). As to applications for the allocation of infrastructure capacity crossing more than one network see PARA 119 et seq ante.

9 Ibid reg 19(5). The text refers to requests which must be submitted in accordance with the timetable set out in Sch 4 (as to which see PARA 118 ante): see reg 19(5).

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122. Scheduling and co-ordination.

The infrastructure manager¹ must, so far as possible: (1) meet all requests for infrastructure capacity², including those requests for train paths³ which cross more than one network⁴; and (2) in so doing, take account of all constraints on applicants⁵, including the economic effect on their business⁶. The infrastructure manager may give priority to specific services within the scheduling and co-ordination process, but only in accordance with the provisions governing the designation of specialised infrastructure⁷ and declarations of congested infrastructure⁸.

In the event of conflict between different requests for infrastructure capacity, the infrastructure manager must use all best endeavours, in consultation with the appropriate applicants, and through co-ordination of the requests, to ensure the best possible matching of all requirements and, in so far as it is reasonable to do so, may propose alternative infrastructure capacity from that requested in order to resolve the conflict⁹. The infrastructure manager must facilitate the establishment and operation of a dispute resolution system to resolve disputes about the allocation of infrastructure capacity and, where that system is applied, a decision on the matters in dispute must be reached no later than ten working days¹⁰ after the final submission of all relevant information in accordance with that system¹¹.

The infrastructure manager must take such measures as are appropriate to deal with any concerns about the allocation process raised by interested parties¹². He also must consult interested parties about the draft working timetable, and must allow such interested parties a period of at least one calendar month to submit their comments¹³.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 For the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante.

3 For the meaning of 'train path' see PARA 109 note 3 ante.

4 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 20(1)(a). For the meaning of 'network' see PARA 109 note 7 ante. As to applications for the allocation of infrastructure capacity see PARA 121 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

5 For the meaning of 'applicant' see PARA 110 note 1 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 20(1)(b).

7 Ie in accordance with the provisions in *ibid* reg 22 (as to which see PARA 124 post): see reg 20(2).

8 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 20(2). The text refers to the provisions in *ibid* reg 23 (as to which see PARA 125 post): see reg 20(2). For the meaning of 'congested infrastructure' see PARA 125 note 4 post.

9 *Ibid* reg 20(4).

10 For these purposes, 'working day' means any day which is not a Saturday, Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales by virtue of the Banking and Financial Dealings Act 1971 s 1 (see *TIME* vol 97 (2010) PARA 321): Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(1). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

11 Ibid reg 20(5). As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 ante.

12 Ibid reg 20(6). For these purposes, 'interested parties' includes: (1) all applicants for infrastructure capacity as part of the specific allocation process to which the draft working timetable relates (reg 20(7)(a)); and (2) other parties who have indicated to the Office of Rail Regulation, in such form or manner as that Office may from time to time prescribe, that they wish to have the opportunity to comment as to the effect that the working timetable might have on their ability to procure rail services during the working timetable period to which the draft working timetable relates (reg 20(7)(b)). Where the Office of Rail Regulation, by virtue of reg 20(7)(b), prescribes the manner and form of any notification to be lodged, that Office must make that prescription and details of such manner and form publicly available: reg 28(6). For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante; and for the meanings of 'working timetable' and 'working timetable period' see PARA 118 note 8 ante. As to the draft working timetable see PARA 118 note 11 ante.

13 Ibid reg 20(3).

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123. Ad hoc requests.

In addition to making an application for capacity¹ in accordance with the annual timetable process², an applicant³ may submit *ad hoc* requests⁴ for infrastructure capacity in the form of individual train paths to the infrastructure manager⁵. The infrastructure manager must respond to such a request as quickly as possible and, in any event, no later than five working days⁶ from receipt of the request⁷. The infrastructure manager must make available, to all potential applicants for such individual train paths, information about available spare capacity on the network⁸ for which he is responsible⁹; and he must, including in the case of congested infrastructure¹⁰, undertake an evaluation of the need for reserve capacity to be kept available within the final working timetable¹¹ to enable him to respond rapidly to foreseeable *ad hoc* requests for infrastructure capacity¹².

1 For the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante.

2 I.e. the process described in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 19 (see PARA 121 ante): see reg 21(1).

3 For the meaning of 'applicant' see PARA 110 note 1 ante.

4 For these purposes, '*ad hoc* request' means a request for individual train paths made other than in accordance with the timetable for the capacity allocation process as set out in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 4 (see PARA 118 ante): reg 3(1). For the meaning of 'allocation' see PARA 111 note 2 ante; and for the meaning of 'train path' see PARA 109 note 3 ante.

5 Ibid reg 21(1). For the meaning of 'infrastructure manager' see PARA 109 note 7 ante. As to the offence of making false statements, etc when making any application under or for the purposes of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 418 post.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

6 For the meaning of 'working day' see PARA 122 note 10 ante.

7 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 21(2).

8 For the meaning of 'network' see PARA 109 note 7 ante.

9 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 21(3). As to restrictions on the disclosure of information which has been obtained under or by virtue of any provision of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 110 note 2 ante.

10 For the meaning of 'congested infrastructure' see PARA 125 note 4 post.

11 For the meaning of 'working timetable' see PARA 118 note 8 ante.

12 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 21(4).

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124. Designation of specialised infrastructure.

All infrastructure capacity¹ must be available for the use of all types of rail transport service which conform to the characteristics necessary for use of that infrastructure (as defined in the network statement² which is required to be made by the infrastructure manager)³. However, the infrastructure manager may⁴ designate particular sections of the infrastructure for use by specified types of rail service and, once the infrastructure is so designated, he may give priority to that specified type of rail service in the allocation of infrastructure capacity, subject to the provisions that⁵:

- 434 (1) suitable alternative routes for other types of rail transport service must exist and be available⁶;
- 435 (2) before making such a designation the infrastructure manager must consult the Secretary of State⁷, the Office of Rail Regulation⁸ and all other interested parties⁹; and
- 436 (3) such designation must not prevent the use of that designated infrastructure by other types of rail transport service when capacity is available and an application for that capacity is submitted by an applicant¹⁰ wishing to operate a service using rolling stock which conforms to the technical characteristics necessary for operation on that infrastructure¹¹.

1 For the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante.

2 For the meaning of 'network statement' see PARA 113 note 2 ante.

3 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 22(1). For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

4 Ie without prejudice to the consolidated versions of the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) and of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty': see PARA 115 note 30 ante) arts 81, 82 and 86 (arts 81, 82 and 86 formerly arts 85, 86 and 90; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) (see COMPETITION vol 18 (2009) PARA 26 et seq): see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 22(2).

5 Ibid reg 22(2).

6 Ibid reg 22(3)(a).

7 Ibid reg 22(3)(b)(i). As to the Secretary of State see PARA 35 ante. Where an element of the infrastructure which it is proposed to designate is in Scotland, the Scottish Ministers must be consulted: see reg 22(3)(b)(ii). The Scottish Ministers are the members of the Scottish Executive: see the Scotland Act 1998 s 44; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to Scotland see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 51 et seq.

8 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 22(3)(b)(iii). For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

9 Ibid reg 22(3)(b)(iv).

- 10 For the meaning of 'applicant' see PARA 110 note 1 ante.
- 11 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 22(3)(c).

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125. Declaration of congested infrastructure.

Where, after the co-ordination of requests for capacity¹ and consultation with the applicants², it is not possible for the infrastructure manager³ to satisfy requests for infrastructure adequately, the infrastructure manager must declare that element of the infrastructure on which such requests cannot be satisfied to be congested⁴. Similarly, where, during the preparation of the working timetable⁵ for the next timetable period⁶, the infrastructure manager considers that an element of the infrastructure is likely to become congested during the period to which that working timetable relates, he must declare that element of the infrastructure to be congested⁷. When infrastructure has been declared to be congested in this way⁸, the infrastructure manager must inform existing users of that infrastructure⁹, new applicants for infrastructure capacity which includes that element of the infrastructure which has been declared to be congested¹⁰, the Office of Rail Regulation¹¹ and the Secretary of State¹².

When infrastructure has been declared to be congested¹³, the infrastructure manager must undertake a capacity analysis of the congested infrastructure¹⁴, unless a capacity enhancement plan¹⁵ is in the process of being implemented¹⁶. When an element of the infrastructure has been declared to be congested¹⁷, and either: (1) a charge¹⁸ has not been levied¹⁹; or (2) the charge described in head (1) above has been levied but has not achieved a satisfactory result²⁰, the infrastructure manager may set priority criteria²¹ for the allocation²² of infrastructure capacity which includes that congested element of the infrastructure²³.

If during the course of the working timetable period to which the declaration of congested infrastructure relates, but before the completion of the capacity analysis, the congestion is resolved, the infrastructure manager may revoke the declaration that has been made²⁴.

1 For the meaning of 'infrastructure capacity' see PARA 109 note 3 ante.

2 In accordance with the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 20(4) (as to which see PARA 122 ante): see reg 23(1). For the meaning of 'applicant' see PARA 110 note 1 ante.

3 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

4 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 23(1).

For these purposes, 'congested infrastructure' means a section of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity: Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 2(c); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

5 For the meaning of 'working timetable' see PARA 118 note 8 ante.

6 For the meaning of 'working timetable period' see PARA 118 note 8 ante.

7 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 23(2).

8 le under the provisions of *ibid* reg 23: see reg 23(3).

9 *Ibid* reg 23(3)(a).

10 *Ibid* reg 23(3)(b).

11 *Ibid* reg 23(3)(c). For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

12 *Ibid* reg 23(3)(d). As to the Secretary of State see PARA 35 ante. Where any element of the infrastructure which has been declared to be congested is in Scotland, the Scottish Ministers must be informed: see reg 23(3)(e). As to the Scottish Ministers see PARA 124 note 7 ante.

13 le in accordance with *ibid* reg 23(1) (as to which see the text and notes 1-4 supra) or reg 23(2) (as to which see the text and notes 5-7 supra): see reg 23(4).

14 le as described in *ibid* reg 24 (as to which see PARA 126 post): see reg 23(4).

15 le as described in *ibid* reg 25 (as to which see PARA 127 post): see reg 23(4). For the meaning of 'capacity enhancement plan' see PARA 127 note 3 post.

16 *Ibid* reg 23(4).

17 See note 13 supra.

18 le as described in the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Sch 3 para 1(8) (as to which see PARA 115 ante): see reg 23(5)(a).

19 *Ibid* reg 23(5)(a).

20 *Ibid* reg 23(5)(b).

21 The priority criteria referred to in the text must: (1) take account of the importance of a service to society, relative to any other service which will consequently be excluded (*ibid* reg 23(6)(a)); and (2) ensure that freight services, and in particular international freight services, are given adequate consideration in the determination of those criteria (reg 23(6)(b)). For these purposes, 'international freight service' means transport services where the train crosses at least one border of a Member State; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border: Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) art 3 (definition added by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L75, 15.03.2001, p 1)); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2).

22 For the meaning of 'allocation' see PARA 111 note 2 ante.

23 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 23(5).

24 *Ibid* reg 23(7). For these purposes, the text refers to the declaration made in accordance with reg 23(1) (as to which see the text and notes 1-4 supra): see reg 23(7). Where reg 23(7) applies, the infrastructure manager must inform the persons referred to in reg 23(3) (see the text and notes 9-12 supra) that the declaration has been revoked: reg 23(8).

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126. Capacity analysis of congested infrastructure.

Where required¹, the infrastructure manager² must carry out a capacity analysis of the congested infrastructure³ in order to identify the reasons for the congestion and the measures which might be taken in the short and medium term to ease that congestion⁴. The infrastructure manager must consult the Secretary of State⁵ during the preparation of the capacity analysis⁶.

In conducting the capacity analysis, and in order to identify the reasons for the congestion, the infrastructure manager must consider⁷:

- 437 (1) the characteristics of the congested infrastructure⁸;
- 438 (2) the operating procedures used on that infrastructure⁹; and
- 439 (3) the characteristics of the different rail services which have been allocated capacity to operate on that infrastructure¹⁰.

In seeking to determine measures to alleviate congestion, the infrastructure manager must consider, in particular¹¹:

- 440 (a) re-routing of services¹²;
- 441 (b) re-timing of services¹³;
- 442 (c) alterations to the line-speed¹⁴; and
- 443 (d) infrastructure improvements¹⁵.

The infrastructure manager must complete the capacity analysis within six months from the date on which the infrastructure is declared to be congested¹⁶ and make the findings of the analysis available¹⁷ to existing users of that infrastructure¹⁸, new applicants for infrastructure capacity which includes that element of the infrastructure which has been declared to be congested¹⁹, the Office of Rail Regulation²⁰ and the Secretary of State²¹.

1 In accordance with the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 23(4) (as to which see PARA 125 ante): see reg 24(1).

2 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

3 For the meaning of 'congested infrastructure' see PARA 125 note 4 ante; and for the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante.

4 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 24(1).

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

5 As to the Secretary of State see PARA 35 ante. Where any part of the capacity analysis relates to railway infrastructure in Scotland, the Scottish Ministers must be consulted: see *ibid* reg 24(4). As to the Scottish Ministers see PARA 124 note 7 ante.

6 *Ibid* reg 24(4).

7 *Ibid* reg 24(2).

8 Ibid reg 24(2)(a).

9 Ibid reg 24(2)(b).

10 Ibid reg 24(2)(c).

11 Ibid reg 24(3).

12 Ibid reg 24(3)(a).

13 Ibid reg 24(3)(b).

14 Ibid reg 24(3)(c).

15 Ibid reg 24(3)(d).

16 It is declared to be congested in accordance with ibid reg 23(1) or reg 23(2) (as to which see PARA 125 ante): see reg 24(3).

17 Ibid reg 24(4).

18 Ibid regs 23(3)(a), 24(4).

19 Ibid regs 23(3)(b), 24(4).

20 Ibid regs 23(3)(c), 24(4). For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

21 Ibid regs 23(3)(d), 24(4). Where any element of the infrastructure which has been declared to be congested is in Scotland, the Scottish Ministers must be informed: see regs 23(3)(e), 24(4).

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127. Capacity enhancement plan.

The infrastructure manager¹ must, within six months of the publication of a capacity analysis², produce a capacity enhancement plan³.

In producing the capacity enhancement plan, the infrastructure manager must⁴:

- 444 (1) consult such interested parties as he considers necessary⁵, including existing users of that infrastructure⁶, new applicants for infrastructure capacity which includes that element of the infrastructure which has been declared to be congested⁷, the Office of Rail Regulation⁸ and the Secretary of State⁹; and
- 445 (2) at least one month before the deadline for completion of the plan, seek the prior approval of the Secretary of State¹⁰ to the capacity enhancement plan¹¹.

The capacity enhancement plan must identify¹²:

- 446 (a) the reasons for the congestion¹³;
- 447 (b) the likely future development of traffic¹⁴;
- 448 (c) the constraints on infrastructure development¹⁵; and
- 449 (d) the options for and costs of enhancing the capacity, including the potential effect on access charges¹⁶.

On the basis of a cost benefit analysis of the potential measures for action identified in the capacity enhancement plan, that plan must include¹⁷: (i) details of the action to be taken to enhance the capacity of the congested infrastructure¹⁸; and (ii) a timetable for the completion of the detailed measures identified in accordance with head (i) above¹⁹.

If the utilisation of capacity on that element of the infrastructure which is the subject of the capacity enhancement plan attracts a scarcity charge²⁰, the infrastructure manager must cease the levying of such charge in situations where²¹:

- 450 (A) the infrastructure manager is under an obligation, within the specified deadline, to produce a capacity enhancement plan²² but he does not produce such a plan²³ for that part of the infrastructure which is subject to the scarcity charge²⁴; or
- 451 (B) he fails to make progress with implementation of those areas of the action plan which are the subject of detailed measures²⁵.

However, this prohibition does not apply where the action plan which includes detailed measures²⁶ cannot be implemented for reasons beyond the immediate control of the infrastructure manager²⁷, or where the options identified in that action plan are not economical or financially viable²⁸, provided that prior approval to continue to levy the scarcity charge is obtained from the Office of Rail Regulation (or, in the case of a rail link facility²⁹, the Secretary of State)³⁰.

At the end of the six month period starting with the publication of the capacity analysis³¹, whether or not the approval sought under head (2) above has been received, the infrastructure

manager must provide the parties consulted under head (1) above with a copy of the plan and the timetable for completion of the measures identified to resolve the congestion³².

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 Ie in accordance with the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 24 (as to which see PARA 126 ante): see reg 25(1).

3 Ibid reg 25(1). For these purposes, 'capacity enhancement plan' means a measure or series of measures with a calendar for their implementation which are proposed to alleviate the capacity constraints leading to the declaration of a section of infrastructure as 'congested infrastructure': Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 2(d); definition applied by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 3(2). For the meaning of 'congested infrastructure' see PARA 125 note 4 ante; and for the meanings of 'infrastructure capacity' and 'railway infrastructure' see PARA 109 note 3 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

4 Ibid reg 25(2).

5 Ibid reg 25(2)(a).

6 Ibid regs 23(3)(a), 25(2)(a).

7 Ibid regs 23(3)(b), 25(2)(a).

8 Ibid regs 23(3)(c), 25(2)(a). For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

9 Ibid regs 23(3)(d), 25(2)(a). Where any element of the infrastructure which has been declared to be congested is in Scotland, the Scottish Ministers must be consulted: see regs 23(3)(e), 25(2)(a). As to the Scottish Ministers see PARA 124 note 7 ante.

10 If any part of the capacity enhancement plan relates to infrastructure in Scotland, the prior approval of the Scottish Ministers must be sought: see ibid reg 25(2)(b).

11 Ibid reg 25(2)(b).

12 Ibid reg 25(3).

13 Ibid reg 25(3)(a).

14 Ibid reg 25(3)(b).

15 Ibid reg 25(3)(c).

16 Ibid reg 25(3)(d).

17 Ibid reg 25(4).

18 Ibid reg 25(4)(a).

19 Ibid reg 25(4)(b).

20 Ie in accordance with ibid Sch 3 para 1(8) (as to which see PARA 115 ante): see reg 25(5).

21 Ibid reg 25(5).

22 Ie where ibid reg 25(1) applies (as to which see the text and notes 1-3 supra): see reg 25(5).

23 Ie as required by ibid reg 25: see reg 25(5)(a).

24 Ibid reg 25(5)(a).

25 Ibid reg 25(5)(b). The reference in the text to areas of the action plan which are the subject of detailed measures is to those areas of the action plan produced in accordance with reg 25(4) (as to which see the text and notes 17-19 supra): see reg 25(5)(b).

26 Ie the action plan produced in accordance with ibid reg 25(4) (as to which see the text and notes 17-19 supra): see reg 25(6)(a).

27 Ibid reg 25(6)(a).

28 Ibid reg 25(6)(b).

29 For the meaning of 'rail link facility' see PARA 114 note 12 ante.

30 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 25(6).

31 Ie in accordance with ibid reg 24 (as to which see PARA 126 ante): see reg 25(7).

32 Ibid reg 25(7).

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128. Use of train paths.

The infrastructure manager¹ must, in particular where infrastructure has been declared to be congested², require an applicant³ who has, over a period of at least one month, used a train path⁴ less often than the threshold quota stipulated in the network statement⁵, to surrender that train path⁶. However, this requirement does not apply if, in the view of the infrastructure manager, the failure to use the train path in accordance with the threshold quota stipulated in the network statement arose as a result of non-economic reasons outside the control of the applicant⁷.

The infrastructure manager may in the network statement specify conditions under which previous levels of capacity⁸ utilisation will be taken into account in determining the priorities to be used in making decisions on the allocation⁹ of capacity¹⁰.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 In accordance with the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 23 (as to which see PARA 125 ante): see reg 26(1). For the meaning of 'congested infrastructure' see PARA 125 note 4 ante; and for the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

3 For the meaning of 'applicant' see PARA 110 note 1 ante.

4 For the meaning of 'train path' see PARA 109 note 3 ante.

5 For the meaning of 'network statement' see PARA 113 note 2 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 26(1).

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

7 Ibid reg 26(2).

8 For the meaning of 'infrastructure capacity' see PARA 109 note 3 ante.

9 For the meaning of 'allocation' see PARA 111 note 2 ante.

10 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 26(3).

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129. Measures taken in the event of disruption.

In the event of disruption to train movements caused by technical failure or accident, the infrastructure manager¹ must take all such steps as are necessary to restore the normal operation of the network².

In the event of a serious incident or serious disruption to train movements, the infrastructure manager must have in place a contingency plan listing the public bodies which are required to be informed³.

In the event of an emergency (and where absolutely necessary on account of a breakdown which renders a part of the infrastructure⁴ temporarily unusable) the infrastructure manager may withdraw allocated train paths⁵ without warning and with immediate effect for such period as is necessary to repair the affected infrastructure⁶.

The infrastructure manager may, if he deems it to be necessary, require applicants⁷ to make available to him such resources as he considers appropriate to restore the normal operation of the network as quickly as possible⁸. However, this requirement is subject to the proviso that where a contract or framework agreement⁹ between an applicant and the infrastructure manager incorporates conditions as to the special measures to be taken in the event of disruption, the resources required by the infrastructure manager to restore the normal operation of the network¹⁰ must be in accordance with those conditions¹¹.

1 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

2 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 27(1). For the meaning of 'network' see PARA 109 note 7 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 5 (regs 16-27) see PARA 109 note 3 ante.

3 Ibid reg 27(2).

4 For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

5 For the meaning of 'train path' see PARA 109 note 3 ante; and for the meaning of 'allocation' see PARA 111 note 2 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 27(3).

7 For the meaning of 'applicant' see PARA 110 note 1 ante.

8 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 27(4).

9 For the meaning of 'framework agreement' see PARA 120 note 3 ante.

10 Ie under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 27(4) (as to which see the text and notes 7-8 supra): see reg 27(5).

11 Ibid reg 27(5).

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(iv) Franchise Agreements in relation to Passenger Services

A. SCOPE

130. Designation of services to be franchised.

It is the duty of the appropriate designating authority¹ from time to time to designate such services² for the carriage of passengers by railway³ as it considers ought to be provided under franchise agreements⁴. The appropriate designating authority may perform its duty⁵ by designating particular services or services of a class or description⁶.

A designation may be varied or revoked⁷. However, a variation or revocation of the designation of particular services, or services of a class or description, does not affect any franchise agreement previously entered into with respect to those services or services of that class or description⁸.

1 For these purposes, 'appropriate designating authority' means the Secretary of State: Railways Act 1993 ss 23(3), 83(1) (definition added by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 13(4)(a)). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

2 ie other than services which are, by virtue of ibid s 24 (as amended) (see PARA 131 post), exempt from designation under s 23(1) (as amended): see s 23(1) (as amended: see note 4 infra).

3 For the meanings of 'railway' and 'services for the carriage of passengers by railway' see PARA 82 note 2 ante.

4 Railways Act 1993 s 23(1) (amended by the Transport Act 2000 s 212(1); and the Railways Act 2005 Sch 1 Pt 1 para 13(1)).

Any reference in the Railways Act 1993 Pt I (as amended) to the provision of services under a franchise agreement is a reference to the provision of those services by the franchise operator; and where the franchise operator is, or is to be, a wholly owned subsidiary of the franchisee, any reference to the provision of services by the franchisee under a franchise agreement must accordingly be construed as a reference to his securing their provision by the franchise operator: s 23(4). For these purposes, 'franchise agreement' means an agreement with the Secretary of State (or with the Secretary of State and the Welsh Ministers jointly) under which another party undertakes either to provide or to secure that a wholly owned subsidiary of his provides, throughout the franchise term, those services for the carriage of passengers by railway to which the agreement relates: s 23(3) (definition amended by the Railways Act 2005 Sch 1 Pt 1 para 13(4)(b)). 'Franchise term', in relation to any franchise agreement, means the period specified in the franchise agreement as the period throughout which the franchisee is to provide, or secure that a wholly owned subsidiary of his provides, the franchised services, and includes any such extension of that period as is mentioned in the Railways Act 1993 s 29(3) (provision enabling term to be extended: see PARA 136 post); 'franchise period', in relation to any franchise agreement, means the franchise term, except where the franchise agreement is terminated before the end of that term, in which case it means so much of that term as ends with that termination; 'franchisee' means, in relation to a franchise agreement under which a party undertakes to secure that a wholly owned subsidiary of his provides the franchised services, the party so undertaking or, in relation to any other franchise agreement, the person who is to provide the franchised services; 'franchised services', in relation to any franchise agreement, means the services for the carriage of passengers by railway which are to be provided under that franchise agreement; and 'franchise operator', in relation to any franchise agreement, means the person (whether the franchisee or, as the case may be, the wholly owned subsidiary of the franchisee) who is to provide the franchised services: s 23(3). Accordingly, for the purposes of Pt I (as amended), 'franchise agreement', 'franchise operator', 'franchise period', 'franchise term', 'franchised services' and 'franchisee' have

the meanings given by s 23(3); s 83(1). For the meaning of 'wholly owned subsidiary' see PARA 7 note 4 ante. As to the Welsh Ministers see PARA 35 ante; and as to franchising in Wales see further PARA 40 ante. As to the Scottish Ministers and the designation of Scottish and cross-border services see s 23(2ZA)-(2ZC) (added by the Railways Act 2005 Sch 1 Pt 1 para 13(2)). For these purposes, 'cross-border service' means a railway passenger service starting either in England and Wales or in Scotland and ending, or otherwise making at least one scheduled call, in the other: s 83(1) (definition added by the Railways Act 2005 Sch 1 Pt 2 para 37(1), (2)). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante; for the meaning of 'railway passenger service' see PARA 36 note 2 ante; and for the meaning of 'scheduled call' see PARA 85 note 14 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

As to the franchising of railway services see further the Railways Act 1993 s 24 (as amended) (exemption of passenger services from franchising regime: see PARA 131 post); s 25 (as amended) (public sector operators not to be franchisees: see PARA 132 post); s 26 (as amended) (invitations to tender: see PARA 133 post); s 26ZA (as added and amended) (no adequate tender received: see PARA 134 post); s 27 (as amended) (transfers: see PARA 139 post); s 28 (as amended) (fares: see PARA 135 post); s 29 (as amended) (other terms and conditions of franchise agreements: see PARA 136 post); s 30 (as substituted and amended) (duty in absence of franchise: see PARA 138 post); s 31 (as amended) (leases: see PARA 136 post). See also the Railways Act 2005 s 24 (proposals to discontinue franchised or secured passenger services: see PARA 147 post).

As to the duty of the Secretary of State to exercise his franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante. Before entering into a franchise agreement, the Secretary of State must consult, according to specified circumstances, the Passenger Transport Executive for an area in England (see PARA 64 ante) or Transport for London (see PARAS 66, 67 ante). As to the modification (in order to take account of the Greater London Authority) of franchise agreements entered into under the Railways Act 1993 Pt I (as amended) before 11 November 1999 see the Greater London Authority Act 1999 s 205.

As to the duty of the Rail Passengers' Council to investigate matters relating to the provision of railway passenger services under a franchise agreement see PARA 72 ante.

5 Ie under the Railways Act 1993 s 23(1) (as amended) (see the text and notes 1-4 supra): see s 23(2) (as amended: see note 6 infra).

6 Ibid s 23(2) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 14(1), (3)(b); and the Railways Act 2005 Sch 1 Pt 1 para 13(1)). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

7 Ibid s 23(2A) (added by the Transport Act 2000 s 212(2)).

8 Railways Act 1993 s 23(2A) (as added: see note 7 supra).

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131. Exemptions from need to franchise.

The appropriate designating authority¹ may by order² grant exemption from designation³ in respect of such services for the carriage of passengers by railway as may be specified in the order⁴, but subject to compliance with such conditions (if any) as may be so specified⁵. Such a franchise exemption may be granted:

- 452 (1) to persons of a particular class or description⁶ or to a particular person⁷; and
- 453 (2) in respect of services generally, services of a particular class or description or a particular service, or in respect of part only of any such services or service⁸.

Franchise exemptions may make different provision for different cases⁹.

If a person who provides, or who proposes to introduce, services for the carriage of passengers by railway makes an application¹⁰ to the appropriate designating authority for the grant of an exemption¹¹ from designation¹² in respect of any such service which he provides or proposes to introduce, the appropriate designating authority, after consultation with the Office of Rail Regulation¹³:

- 454 (a) may either grant or refuse the exemption¹⁴, whether wholly or to such extent as the appropriate designating authority may specify in the exemption¹⁵; and
- 455 (b) if and to the extent that the appropriate designating authority grants it, may do so subject to compliance with such conditions (if any) as the appropriate designating authority may so specify¹⁶.

If any condition¹⁷ (the 'broken condition') of a franchise exemption granted by the appropriate designating authority is not complied with, it may give to any relevant person¹⁸ a direction¹⁹ declaring that the franchise exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction²⁰.

Subject to the provisions concerning such a broken condition²¹, a franchise exemption, unless previously revoked in accordance with any term contained in the franchise exemption, continues in force for such period as may be specified in, or determined by or under, the franchise exemption²².

1 Ie, for these purposes, the Secretary of State: see PARA 130 note 1 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

2 As to the making of orders under the Railways Act 1993 generally see PARA 35 note 12 ante; and as to the orders made under s 24 (as amended) see note 4 infra.

3 Ie exemption from designation under ibid s 23(1) (as amended) (passenger services to be subject to franchise agreements: see PARA 130 ante): see s 24(1) (as amended: see note 5 infra). For these purposes, 'franchise exemption' means an exemption from designation under s 23(1) (as amended) (see PARA 130 ante) granted under any provision of s 24 (as amended) in respect of any service for the carriage of passengers by railway: ss 24(13), 83(1). For the meanings of 'railway' and 'services for the carriage of passengers by railway' see PARA 82 note 2 ante.

4 The Secretary of State, in exercise of the powers conferred on him by *ibid* s 24 (as amended) has made the following orders: the Railways (London Regional Transport) (Exemptions) Order 1994, SI 1994/573 (amended by the Greater London Authority Act 1999 s 198; and SI 2003/1615); the Railways (Heathrow Express) (Exemptions) Order 1994, SI 1994/574 (amended by SI 2002/2703); the Railways (Class and Miscellaneous Exemptions) Order 1994, SI 1994/606; the Railways (Heathrow Express Temporary Network) (Exemptions) Order 1997, SI 1997/1531; the Docklands Light Railway (Lewisham Extension) (Exemptions) Order 1999, SI 1999/3112; the Merseyrail Electrics Network Order 2002, SI 2002/1946; the Docklands Light Railway (Silvertown and London City Airport Extension) (Exemptions etc) Order 2006, SI 2006/2536; and the Railways (North and West London Lines) Exemption Order 2007, SI 2007/1790. As to the duty of the national authority to maintain a register including the provisions of every franchise exemption see *PARA 37 ante*. As to the transport strategy for London see the Greater London Authority Act 1999 ss 141-153; and *LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 262-268*.

5 Railways Act 1993 s 24(1) (amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 14(1), (2)).

The Railways Act 1993 s 24(1) (as amended) applies in relation to the grant of a franchise exemption whether it is to become effective on, or after, 1 April 1994 (ie the day on which s 23(1) (as amended) (see *PARA 130 ante*) comes into force: see the Railways Act 1993 (Commencement No 4 and Transitional Provision) Order 1994, SI 1994/571); Railways Act 1993 s 24(11).

6 A franchise exemption granted to persons of a particular class or description must be published in such manner as the appropriate designating authority considers appropriate for bringing it to the attention of persons of that class or description: *ibid* s 24(2) (amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (2)). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

7 *Ibid* s 24(2)(a).

8 *Ibid* s 24(2)(b).

9 *Ibid* s 24(12).

10 Ie an application under *ibid* s 24(3) (as amended): see s 24(3) (as amended: see note 13 *infra*).

11 Any application for a franchise exemption under *ibid* s 24(3) (as amended) must be made in writing; and where any such application is made, the appropriate designating authority may require the applicant to furnish it with such information as the appropriate designating authority may consider necessary to enable it to decide whether to grant or refuse the franchise exemption: s 24(9) (amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (2), (7)). As to the meaning of 'information' see *PARA 34 note 5 ante*. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in *PARA 419 post*); and as to false statements see s 146 (cited in *PARA 416 post*).

12 Ie designation under *ibid* s 23(1) (as amended) (passenger services to be subject to franchise agreements: see *PARA 130 ante*): see s 24(3) (as amended: see note 13 *infra*).

13 *Ibid* s 24(3) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 s 59(8), Sch 1 Pt 1 para 14(1), (2), Sch 13 Pt 1). As to the Office of Rail Regulation see *PARA 49 et seq ante*; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (as amended), see s 4 (as amended); and *PARA 33 ante*.

As to the Scottish Ministers and exemptions in respect of a cross-border service see s 24(3A) (added by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (4)). As to the Scottish Ministers see *PARA 124 note 7 ante*. The Railways Act 1993 s 24(3) (as amended) applies in relation to the grant of a franchise exemption whether it is to become effective on, or after, 1 April 1994 (ie the day on which s 23(1) (as amended) (see *PARA 130 ante*) comes into force: see the Railways Act 1993 (Commencement No 4 and Transitional Provision) Order 1994, SI 1994/571); Railways Act 1993 s 24(11).

14 Any franchise exemption granted under *ibid* s 24(3) (as amended) must be in writing: s 24(10). However, before granting a franchise exemption under s 24(3) (as amended), the appropriate designating authority must give notice:

93 (1) stating that it proposes to grant the franchise exemption (s 24(4)(a) (s 24(4)(a), (b) amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (5));

94 (2) stating the reasons why it proposes to grant the franchise exemption (Railways Act 1993 s 24(4)(b) (as so amended)); and

- 95 (3) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed franchise exemption may be made (s 24(4)(c)),

and that authority must consider any representations or objections which are duly made and not withdrawn (s 24(4) (amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (2))). A notice under the Railways Act 1993 s 24(4) (as amended) must be given by publishing the notice in such manner as the appropriate designating authority considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the franchise exemption: s 24(5) (amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (2)). For the meaning of 'notice' see PARA 34 note 4 ante.

- 15 Railways Act 1993 s 24(3)(a) (amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (3)).

- 16 Railways Act 1993 s 24(3)(b) (amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (3)).

- 17 For the purposes of the Railways Act 1993 s 24(6) (as amended), 'condition', in relation to a franchise exemption, means any condition subject to compliance with which the franchise exemption was granted: s 24(7).

- 18 For the purposes of ibid s 24(6) (as amended), 'relevant person', in the case of any franchise exemption, means a person who has the benefit of the franchise exemption and who: (1) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or (2) provides any of the services in relation to which the broken condition is not complied with: s 24(7).

- 19 As to directions given under the Railways Act 1993 see s 144 (as amended); and PARA 29 note 13 ante.

- 20 Ibid s 24(6) (amended by the Railways Act 2005 Sch 1 Pt 1 para 14(1), (6)).

- 21 Ie subject to the Railways Act 1993 s 24(6) (as amended) (see the text and notes 17-20 supra): see s 24(8).

- 22 Ibid s 24(8).

UPDATE

131 Exemptions from need to franchise

NOTE 4--SI 1994/573 further amended: SI 2009/3336.

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132. Public sector operators not to be franchisees.

The following bodies and persons ('public sector operators') may not be franchisees¹:

- 456 (1) any minister of the Crown, government department or other emanation of the Crown²;
- 457 (2) any local authority³;
- 458 (3) the Greater London Authority⁴;
- 459 (4) Transport for London⁵;
- 460 (5) any metropolitan county passenger transport authority⁶;
- 461 (6) any body corporate⁷ whose members are appointed by a minister of the Crown, a government department, a local authority, the Greater London Authority, Transport for London or a metropolitan county passenger transport authority or by a body corporate whose members are so appointed⁸;
- 462 (7) a company⁹: (a) a majority of whose issued shares are held by or on behalf of any of the bodies or persons falling within heads (1) to (6) above¹⁰; (b) in which the majority of the voting rights are held by or on behalf of any of those bodies or persons¹¹; (c) a majority of whose board of directors can be appointed or removed by any of those bodies or persons¹²; or (d) in which the majority of the voting rights are controlled by any of those bodies or persons, pursuant to an agreement with other persons¹³;
- 463 (8) a subsidiary¹⁴ of a company falling within head (7) above¹⁵.

1 Railways Act 1993 ss 25(1), 83(1). For the meaning of 'franchisee' see PARA 130 note 4 ante.

2 Ibid s 25(1)(a).

3 Ibid s 25(1)(b). For these purposes, 'local authority' means any county council, county borough council, district council, or London borough council, the Common Council of the City of London, the Council of the Isles of Scilly or any council constituted under the Local Government etc (Scotland) Act 1994 s 2; Railways Act 1993 s 151(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 107; and the Local Government etc (Scotland) Act 1994 s 180(1), (2), Sch 13 para 184(3), Sch 14). As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to Scotland see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 51 et seq. As to London boroughs and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 Railways Act 1993 s 25(1)(bb) (s 25(1)(bb), (bc) added by the Greater London Authority Act 1999 s 202(1), (2)). As to the general transport duty of the Greater London Authority see PARA 66 ante; and as to the Authority generally see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

5 Railways Act 1993 s 25(1)(bc) (as added: see note 4 supra). As to the establishment and railway functions of Transport for London see PARAS 66, 67 ante; and as to Transport for London generally see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 218, 269 et seq.

6 Ibid s 25(1)(c). As to passenger transport areas, authorities and executives in England see PARA 63 et seq ante.

7 For the meaning of 'body corporate' see PARA 7 note 4 ante.

8 Railways Act 1993 s 25(1)(d) (amended by the Greater London Authority Act 1999 s 202(1), (3)).

9 For the meaning of 'company' see PARA 7 note 4 ante.

10 Railways Act 1993 s 25(1)(e)(i).

11 Ibid s 25(1)(e)(ii). For the meaning of references to the voting rights in a company see the Companies Act 1985 s 736A(1), (2) (as added; prospectively repealed) (see further COMPANIES vol 14 (2009) PARA 25); applied by the Railways Act 1993 s 25(2).

12 Ibid s 25(1)(e)(iii). For the meaning of references to the right to appoint or remove a majority of the board of directors see the Companies Act 1985 s 736A(1), (3) (as added; prospectively repealed) (see further COMPANIES vol 14 (2009) PARA 25); applied by the Railways Act 1993 s 25(2).

13 Ibid s 25(1)(e)(iv). As to when rights are treated as being held by a company see the Companies Act 1985 s 736A (as added; prospectively repealed) (see further COMPANIES vol 14 (2009) PARA 25); applied by the Railways Act 1993 s 25(2).

14 For the meaning of 'subsidiary' see PARA 7 note 4 ante.

15 Railways Act 1993 s 25(1)(f).

UPDATE

132 Public sector operators not to be franchisees

TEXT AND NOTES 6, 8--Reference to any metropolitan county passenger transport authority is now to any Integrated Transport Authority for an integrated transport area in England (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247): Railways Act 1993 s 25(1)(c), (d) (substituted by the Local Transport Act 2008 Sch 4 para 58(2)(a), (b)). Railways Act 1993 s 25(1)(ca) added, s 25(1)(d) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 85.

NOTES 11-13--Railways Act 1993 s 25(2) substituted: SI 2009/1941.

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B. FRANCHISING PROCESS

133. Invitations to tender for franchises.

The appropriate franchising authority¹ may select the person who is to be the franchisee² in relation to a franchise agreement³ from among those who submit tenders in response to an invitation to tender⁴ for the right to provide (or to secure that a wholly owned subsidiary⁵ provides) services for the carriage of passengers by railway⁶ under that franchise agreement⁷.

The appropriate franchising authority must prepare any such invitation to tender and must issue that invitation to such persons as it may, after consultation with the Office of Rail Regulation⁸, think fit⁹. However, the appropriate franchising authority must not issue such an invitation to tender to (or entertain such a tender from) any person unless it is of the opinion that the person has, or is likely by the commencement of the franchise term¹⁰ to have, an appropriate financial position and managerial competence, and is otherwise a suitable person, to be the franchisee¹¹.

In deciding whether to select the person who is to be the franchisee under a franchise agreement by means of an invitation to tender and whom so to select, the appropriate franchising authority must have regard to its statement of policy¹².

1 For these purposes, 'appropriate franchising authority' means the Secretary of State: Railways Act 1993 ss 23(3), 83(1) (definition added by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 13(4)(a)). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

2 For the meaning of 'franchisee' see PARA 130 note 4 ante. Public sector operators are not to be franchisees: see *ibid* s 25 (as amended); and PARA 132 ante.

3 For the meaning of 'franchise agreement' see PARA 130 note 4 ante.

4 Ie under the Railways Act 1993 s 26 (as amended): see s 26(1) (as amended: see note 7 *infra*). Before issuing an invitation to tender for a franchise agreement, the Secretary of State must consult, according to specified circumstances, the Passenger Transport Executive for an area in England (see PARA 64 ante) or Transport for London (see PARA 67 ante). As to the situation that arises when no adequate tender for a franchise agreement is received see PARA 134 post.

5 For the meaning of 'wholly owned subsidiary' see PARA 7 note 4 ante.

6 For the meanings of 'railway' and 'services for the carriage of passengers by railway' see PARA 82 note 2 ante.

7 Railways Act 1993 s 26(1) (amended by the Railways Act 2005 Sch 1 Pt 1 para 15(1), (2)). As to the duty of the national authority to exercise its franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante.

8 As to the Office of Rail Regulation see PARA 49 *et seq* ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (as amended), see s 4 (as amended); and PARA 33 ante.

9 Ibid s 26(2) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 16(1), (3)(b); the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 15(1), (3)).

10 For the meaning of 'franchise term' see PARA 130 note 4 ante.

11 Railways Act 1993 s 26(3) (amended by the Transport Act 2000 Sch 16 paras 8, 16(1), (3)(b); and the Railways Act 2005 Sch 1 Pt 1 para 15(1), (3)).

12 Railways Act 1993 s 26(4C) (s 26(4A)-(4F) added by the Railways Act 2005 Sch 1 Pt 1 para 15(1), (5)). The Secretary of State (and the Scottish Ministers) must each publish a statement of policy about how he proposes, or (as the case may be) they propose, to exercise the power under the Railways Act 1993 s 26(1) (as amended) (see the text and notes 1-7 supra): s 26(4A) (as so added). The statement must in particular include the policy of the Secretary of State (or of the Scottish Ministers) about:

- 96 (1) when his (or their) selection of the person to be a franchisee under a franchise agreement is likely to be from those submitting tenders in response to an invitation to do so (s 26(4B)(a) (as so added));
- 97 (2) when it is likely such an invitation is not to be issued (s 26(4B)(b) (as so added)); and
- 98 (3) the means by which he is (or they are) proposing that the selection is to be made in cases where there is no such invitation (s 26(4B)(c) (as so added)).

However, the fact that a statement of policy has not been published by any person under s 26(4A) (as added) does not affect the validity of any selection made as mentioned in s 26(1) (as amended): Railways Act 2005 Sch 1 Pt 1 para 15(6).

The Secretary of State (or Scottish Ministers): (a) may at any time alter or replace the statement of policy which he has made or (as the case may be) which they have made (Railways Act 1993 s 26(4D)(a) (as so added)); and (b) where that statement is altered or replaced, must publish the altered or replacement statement (s 26(4D)(b) (as so added)). Before preparing, altering or replacing a statement of policy, the Secretary of State must consult the Welsh Ministers, and undertake such other consultation as he considers appropriate (and the Scottish Ministers must undertake such consultation as they consider appropriate): s 26(4E) (as so added). Where a statement of policy is prepared, altered or replaced, a copy of it must be laid, in the case of a statement prepared, altered or replaced by the Secretary of State, before Parliament: s 26(4F)(a) (as so added). As to statements prepared, altered or replaced by the Scottish Ministers see s 26(4F)(b) (as so added). As to the Scottish Ministers see PARA 124 note 7 ante.

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134. No adequate tender for franchise agreement.

Where, in the case of an invitation to tender¹ for the provision of services²:

- 464 (1) the appropriate franchising authority³ receives no tender in response to the invitation⁴; or
- 465 (2) it receives a tender but considers that the services would be provided more economically and efficiently if they were provided otherwise than under a franchise agreement⁵ entered into in response to the tender⁶,

the appropriate franchising authority may⁷:

- 466 (a) issue a new invitation to tender⁸ for the provision of the services⁹;
- 467 (b) decide to secure the provision of the services under a franchise agreement with a person who did not submit a tender¹⁰; or
- 468 (c) decide not to seek to secure the provision of the services under a franchise agreement¹¹.

However, nothing in these provisions¹² prevents the appropriate franchising authority, where it has decided not to seek to secure the provision of services under a franchise agreement, from subsequently making a decision to issue a new invitation to tender for the provision of those services¹³.

1 Ie under the Railways Act 1993 s 26 (as amended) (see PARA 133 ante): see s 26ZA(1) (as added: see note 2 infra).

2 Ibid s 26ZA(1) (s 26ZA added by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 16).

3 Ie, for these purposes, the Secretary of State: see PARA 133 note 1 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

4 Ibid s 26ZA(1)(a) (as added: see note 2 supra).

5 For the meaning of 'franchise agreement' see PARA 130 note 4 ante.

6 Railways Act 1993 s 26ZA(1)(b) (as added: see note 2 supra).

7 Ibid s 26ZA(2) (as added: see note 2 supra).

8 Ie under ibid s 26 (as amended) (see PARA 133 ante): see s 26ZA(2)(a) (as added: see note 2 supra).

9 Ibid s 26ZA(2)(a) (as added: see note 2 supra).

10 Ibid s 26ZA(2)(b) (as added: see note 2 supra).

11 Ibid s 26ZA(2)(c) (as added: see note 2 supra).

12 Ie nothing in s 26ZA (as added): see s 26ZA(3) (as added: see note 2 supra).

13 Ibid s 26ZA(3) (as added: see note 2 supra).

As to the duty of the national authority to exercise its franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante.

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135. Franchise agreement may include provision with respect to fares.

A franchise agreement¹ may include provision with respect to the fares to be charged for travel by means of the franchised services². Accordingly, if it appears to the appropriate franchising authority³ that the interests of persons who use, or who are likely to use, franchised services so require, it must ensure that the franchise agreement in question contains⁴ any such provision as it may consider necessary for the purpose of securing that any fares, or any fares of a class or description⁵, which are to be charged are, in its opinion, reasonable in all the circumstances of the case⁶.

Every franchise agreement must include provision requiring the franchise operator⁷:

- 469 (1) to participate in every approved discount fare scheme⁸;
- 470 (2) to charge fares, in cases to which such a scheme applies, at rates which are not in excess of the levels or, as the case may be, the maximum levels set by the scheme⁹; and
- 471 (3) otherwise to comply with the requirements of every such scheme, if and to the extent that the franchised services are services, or services of a class or description, in relation to which the approved discount fare scheme in question applies¹⁰.

1 For the meaning of 'franchise agreement' see PARA 130 note 4 ante.

2 Railways Act 1993 s 28(1). For the meaning of 'franchised services' see PARA 130 note 4 ante.

3 Ie, for these purposes, the Secretary of State: see PARA 133 note 1 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

4 Ie subject to the other provisions of the Railways Act 1993: see eg s 130 (as amended) (penalty fares: see PARA 396 post); and s 135 (as amended) (concessionary travel for railway staff: see PARA 137 post): see s 28(2) (as amended: see note 6 infra).

5 For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

6 Ibid s 28(2) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 18(1), (2)(b), (c); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 18(1)).

As to the duty of the national authority to exercise its franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante.

7 For the meaning of 'franchise operator' see PARA 130 note 4 ante.

8 Railways Act 1993 s 28(3)(a). For these purposes, 'discount fare scheme' means any scheme for enabling persons who are young, elderly or disabled to travel by railway at discounted fares, subject to compliance with such conditions (if any) as may be imposed by or under the scheme; 'discounted fare' means a lower fare than the standard fare for the journey in question; and 'scheme' includes any agreement or arrangements: s 28(5). The discount fare schemes which are to be regarded, in relation to a franchise agreement, for the purposes of s 28 (as amended) as 'approved' are those which are from time to time approved for the purposes of s 28 (as amended) by the appropriate franchising authority: s 28(4) (amended by the Railways Act 2005 Sch 1 Pt 1 para 18(1), (2)(a)). For the meaning of 'railway' see PARA 82 note 2 ante.

As to travel concessions on journeys in and around Greater London see the Greater London Authority Act 1999 ss 240-244 (as amended); and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 396-407.

9 Railways Act 1993 s 28(3)(b).

10 Ibid s 28(3)(c).

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136. Other terms and conditions of franchise agreements.

The appropriate franchising authority¹ may enter into a franchise agreement² on conditions requiring the rendering to the appropriate franchising authority by the franchisee³ or the franchise operator⁴ of payments of such amounts and at such intervals as may be specified in, or determined by or under, the franchise agreement⁵.

A franchise agreement may include provision requiring the franchisee:

- 472 (1) to operate any additional railway asset⁶; or
- 473 (2) to secure the operation of any additional railway asset by the franchise operator or any other wholly owned subsidiary⁷ of the franchisee⁸.

A franchise agreement must include provision specifying the franchise term⁹ and may include provision enabling that term to be extended by such further term as may be specified in the franchise agreement¹⁰. Without prejudice to the generality of the provisions relating to property, rights and liabilities that may be included in a franchise agreement¹¹, a franchise agreement may include provision requiring the franchise operator: (a) to acquire from such person as may be specified in the franchise agreement, and to use, such property or rights as may be so specified¹²; or (b) to undertake such liabilities as may be so specified¹³.

A franchise agreement may contain¹⁴ any such provisions as the appropriate franchising authority may think fit¹⁵.

In any case where:

- 474 (i) a franchise agreement makes provision for the franchisee, the franchise operator or a wholly owned subsidiary of the franchisee to enter into an agreement¹⁶ ('the contemplated agreement') with a person who has an interest in a network or a railway facility¹⁷;
- 475 (ii) the network or railway facility is to be used for or in connection with the provision of any of the franchised services¹⁸; and
- 476 (iii) the contemplated agreement creates a tenancy¹⁹ of any property which (whether in whole or in part) constitutes, or is comprised in, the network or railway facility²⁰,

Part II of the Landlord and Tenant Act 1954²¹ does not apply to that tenancy²².

1 le, for these purposes, the Secretary of State: see PARA 133 note 1 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

2 For the meaning of 'franchise agreement' see PARA 130 note 4 ante.

3 For the meaning of 'franchisee' see PARA 130 note 4 ante. Public sector operators are not to be franchisees: see the Railways Act 1993 s 25 (as amended); and PARA 132 ante.

4 For the meaning of 'franchise operator' see PARA 130 note 4 ante.

5 Railways Act 1993 s 29(1) (amended by the Transport Act 2000 s 274, Sch 31 Pt IV; and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 19).

As to the making of orders securing compliance with conditions or requirements where such conditions or requirements are being contravened, or are likely to be contravened, by a franchisee or any franchise operator see PARA 179 et seq post. As to the duty of the national authority to exercise its franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante.

6 Railways Act 1993 s 29(2)(a). For these purposes, 'additional railway asset' means any network, station or light maintenance depot; and any reference to an additional railway asset includes a reference to any part of an additional railway asset: ss 29(8), 83(1). For the meanings of 'light maintenance depot' and 'railway asset' see PARA 83 note 7 ante; for the meaning of 'network' see PARA 82 note 8 ante; and for the meaning of 'station' see PARA 82 note 5 ante.

7 For the meaning of 'wholly owned subsidiary' see PARA 7 note 4 ante.

8 Railways Act 1993 s 29(2)(b).

9 For the meaning of 'franchise term' see PARA 130 note 4 ante.

10 Railways Act 1993 s 29(3).

11 As to which see PARA 139 post.

12 Railways Act 1993 s 29(4)(a).

13 Ibid s 29(4)(b).

14 Ie subject to the other provisions of the Railways Act 1993: see s 29(5) (as amended: see note 15 infra).

15 Ibid s 29(5) (amended by the Railways Act 2005 Sch 1 Pt 1 para 19).

16 For these purposes, 'agreement' includes a lease, underlease or sublease (as well as a tenancy agreement or an agreement for a lease, underlease or sublease): Railways Act 1993 s 31(4).

17 Ibid s 31(1)(a). For the purposes of s 31, a person is regarded as having an interest in a network or railway facility if he has an estate or interest in, or right over, any of the property which constitutes, or is comprised in, the network or railway facility: s 31(2). Any reference in s 31 to a network or a railway facility includes a reference to any part of a network or railway facility: s 31(3). For the meaning of 'railway facility' generally see PARA 102 note 1 ante.

18 Ibid s 31(1)(b). For the meaning of 'franchised services' see PARA 130 note 4 ante.

19 For these purposes, 'tenancy' has the same meaning as it has in the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 706): Railways Act 1993 s 31(4).

20 Ibid s 31(1)(c).

21 Ie the Landlord and Tenant Act 1954 Pt II (as amended) (security of tenure of business, professional and other tenants: see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 706 et seq): see the Railways Act 1993 s 31(1).

22 Ibid s 31(1).

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137. Franchise agreements may include conditions relating to concessionary travel for railway staff.

Franchise agreements¹ may include conditions with respect to the provision of staff concessionary travel².

The Secretary of State³ may promote the provision of staff concessionary travel⁴, and may enter into agreements or other arrangements concerning its provision⁵, including agreements or arrangements⁶ under which he undertakes to secure the provision of staff concessionary travel (as well as agreements or arrangements under which some other person undertakes to provide, or to secure the provision of, staff concessionary travel)⁷.

The Secretary of State may exercise powers and perform duties conferred or imposed on him in connection with the provision of staff concessionary travel⁸ by entering into agreements or arrangements under which other persons ('sub-contractors') are to perform the function in question⁹.

1 For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by the Railways Act 1993 s 135(14). As to franchise agreements see generally para 130 et seq ante.

2 Ibid s 135(4). Any reference in s 135 (as amended) to the provision of 'staff concessionary travel' is a reference to the provision of free travel (or travel at concessionary rates) for (or for some class or description of) persons (or dependants of persons) who are or have at any time been employed by: (1) a person carrying on a business of providing railway services (s 135(12)(a)); or (2) a person providing welfare or health care services to persons employed by a person falling within head (1) supra (s 135(12)(b)). In the application of s 135(12) in relation to any such agreement, arrangements, conditions or provisions as are mentioned in s 135 (as amended), it is immaterial whether or not the provision of free travel (or travel at concessionary rates) mentioned in s 135(12) extends, in the case of the agreement, arrangements, conditions or provisions in question, only to persons falling within s 135(12) or to such persons and others; and the reference in s 135(2) (as amended) (see the text and notes 3-4 infra) to promoting the provision of staff concessionary travel is to be construed accordingly: s 135(13). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5). For the meaning of 'railway services' see PARA 82 ante; definition applied by s 135(14).

The provisions of s 135 (as amended) are without prejudice to the generality of the provision which may be made in franchise agreements, whether or not with respect to free or concessionary travel; and s 135(4) is without prejudice to the generality of s 135(3) (as amended) (see the text and note 5 infra): s 135(9) (amended by the Transport Act 2000 ss 252, 274, Sch 27 paras 17, 40(1), (3), Sch 31 Pt IV). The provisions of the Railways Act 1993 s 135 (as amended) are also without prejudice to the generality of the conditions that may be included in a passenger licence (which may include conditions in respect of arrangements to provide staff concessionary travel); and the general provisions relating to staff concessionary travel (ie s 135(2)-(4), (6)-(8), (12)-(14) (as amended) (see the text and notes 3-9 infra)) apply equally to licences: see PARA 84 ante.

3 As to the Secretary of State see PARA 35 ante. The Scottish Ministers also have the powers referred to in the text and notes 4-9 infra: see ibid s 135(2)-(3), (6)-(7) (as amended). As to the Scottish Ministers see PARA 124 note 7 ante.

4 Ibid s 135(2) (amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 35(1), (2)).

5 Railways Act 1993 s 135(3) (amended by the Railways Act 2005 Sch 1 Pt 1 para 35(1), (2)).

6 Ie without prejudice to the generality of the Railways Act 1993 s 135(3) (as amended) (see the text and note 5 supra): see s 135(7) (as amended: see note 7 infra).

7 Ibid s 135(7) (amended by the Railways Act 2005 Sch 1 Pt 1 para 35(1), (4)). The Railways Act 1993 s 135(7) (as amended) applies, with the necessary modifications, in relation to the conditions mentioned in s 135(4) (as amended) (see the text and notes 1-2 supra), as it applies in relation to the agreements and arrangements mentioned in s 135(3) (as amended) (see the text and note 5 supra): s 135(8) (amended by the Transport Act 2000 Sch 31 Pt IV). As to the meaning of 'modification' see PARA 33 note 46 ante.

8 le under or by virtue of the Railways Act 1993 s 135(2)-(4) (as amended) (see the text and notes 1-5 supra) or under any agreements or arrangements entered into (or conditions or provisions included) by virtue of s 135(2)-(4) (as amended): see s 135(6) (as amended: see note 9 infra).

9 Ibid s 135(6) (amended by the Transport Act 2000 Sch 27 paras 17, 40(1), (2), Sch 31 Pt IV; and the Railways Act 2005 Sch 1 Pt 1 para 35(1), (3)). As to the meaning of 'functions' see PARA 7 note 12 ante.

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C. SECURED SERVICES

138. Failure to secure subsequent franchise agreement.

The relevant franchising authority¹ must provide (or secure the provision of) services for the carriage of passengers by railway² where a franchise agreement in respect of the services is terminated or otherwise comes to an end but no further franchise agreement has been entered into in respect of the services³. However, this duty does not:

- 477 (1) require the relevant franchising authority to provide or secure the provision of services if and to the extent that, in its opinion, adequate alternative railway passenger services are available⁴;
- 478 (2) require the relevant franchising authority to provide or secure the provision of a Welsh service⁵ where it appears to the authority that it will not be receiving funds from the Welsh Ministers⁶ that are reasonably equivalent to those provided by the Ministers (whether directly to the previous franchisee⁷ or otherwise) in respect of the service provided by the previous franchisee⁸;
- 479 (3) require the Secretary of State to provide or secure the provision of a service within the area of a Passenger Transport Executive⁹ where it appears to him that he will not be receiving funds from the Executive that are reasonably equivalent to those provided by that Executive (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee¹⁰;
- 480 (4) require the Secretary of State to provide or secure the provision of a service that makes scheduled calls¹¹ in Greater London where it appears to him that he will not be receiving funds from Transport for London¹² that are reasonably equivalent to those that were provided by Transport for London (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee¹³;
- 481 (5) preclude it from making a proposal to discontinue franchised or secured services¹⁴ in relation to any of the services, in which case its duty¹⁵ to secure the provision of the services to which the notice relates will¹⁶ terminate on the proposal date specified¹⁷; or
- 482 (6) preclude it from ceasing to provide or secure the provision of any of the following services¹⁸: (a) experimental passenger services¹⁹; (b) services involving travel through the Channel Tunnel²⁰; (c) services that are provided otherwise than as regular scheduled services for the line or station in question²¹; or (d) services that are excluded from the application of the provisions relating to proposals to discontinue franchised or secured services²².

The duty to provide (or to secure the provision of) services where no further franchise agreement has been entered into²³, in relation to any services, ceases if the services begin to be provided again under a franchise agreement²⁴.

¹ For these purposes, 'relevant franchising authority' means the person who was the appropriate franchising authority in relation to the franchise agreement that has been terminated or otherwise come to an end: Railways Act 1993 s 30(3B) (s 30 substituted by the Transport Act 2000 s 212(5); the Railways Act 1993 s

30(3A), (3B) added by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 20(4)). For the meaning of 'franchise agreement' see PARA 130 note 4 ante. For these purposes, the 'appropriate franchising authority' is the Secretary of State: see PARA 133 note 1 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante. As to the duty of the national authority to exercise its franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante.

2 As to the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 ante.

3 Railways Act 1993 s 30(1) (as substituted (see note 1 supra); amended by the Railways Act 2005 s 59(6), Sch 1 Pt 1 para 20(1), (2), Sch 13 Pt 1).

For the purposes of the Railways Act 1993 s 30 (as substituted and amended), the Secretary of State (and the Scottish Ministers) each have power: (1) to provide or operate network services, station services or light maintenance services (s 30(3A)(a) (s 30 as substituted, s 30(3A) as added: see note 1 supra)); or (2) to store goods or consign them from a place to which they have been carried by rail (s 30(3A)(b) (as so substituted and added)). For the meaning of 'light maintenance services' see PARA 82 note 4 ante; for the meaning of 'network services' see PARA 82 ante; and for the meaning of 'station services' see PARA 82 note 5 ante. As to the meaning of 'goods' see PARA 82 note 3 ante. As to the Scottish Ministers see PARA 124 note 7 ante. The Welsh Ministers may make payments to the Secretary of State in respect of the performance of his duty under s 30 (as substituted and amended) in relation to a Welsh service: see PARA 40 ante. The duty under s 30 (as substituted and amended) to provide or secure services does not give rise to any form of duty or liability for breach of statutory duty: see s 50(1) (as amended); and PARA 33 note 46 ante. Any service which is provided by or on behalf of the Secretary of State under s 30 (as substituted and amended) is a 'secured service' for the purposes of the Railways Act 2005 Pt 4 (ss 22-45) (network modifications etc) (see PARA 145 et seq post).

As to the power of the Rail Passengers' Council to investigate matters relating to the provision of railway passenger services see PARA 72 ante.

4 Railways Act 1993 s 30(3)(a) (as substituted (see note 1 supra); amended by the Railways Act 2005 Sch 1 Pt 1 para 20(1)). For the meaning of 'railway passenger service' see PARA 36 note 2 ante.

5 The term 'Welsh service' is not defined in the Railways Act 1993 but for the purposes of s 30 (as substituted and amended) it has the same meaning as in the Railways Act 2005 (see ss 57(1), 58(1); and PARA 40 note 2 ante): see the Railways Act 1993 s 30(3C) (s 30 as substituted (see note 1 supra); s 30(3C) added by the Railways Act 2005 s 18(2)).

6 As to the Welsh Ministers see PARA 35 ante.

7 For these purposes, 'previous franchisee', in relation to a railway passenger service, means the franchisee in relation to the franchise agreement under which the service was previously provided: Railways Act 1993 s 30(3C) (s 30 as substituted (see note 1 supra); s 30(3C) as added (see note 5 supra)). For the meaning of 'franchisee' see PARA 130 note 4 ante.

8 Ibid s 30(3)(aa) (s 30 as substituted (see note 1 supra); s 30(3)(aa)-(ac) added by the Railways Act 2005 s 18(1)).

9 For these purposes, references to a Passenger Transport Executive and to a service within the area of a Passenger Transport Executive are to be construed as they are to be construed for the purposes of the Railways Act 2005 s 13 (railway functions of Passenger Transport Executives in England: see PARA 64 ante): Railways Act 1993 s 30(3C) (s 30 as substituted (see note 1 supra); s 30(3C) as added (see note 5 supra)).

10 Ibid s 30(3)(ab) (s 30 as substituted (see note 1 supra); s 30(3)(ab) as added (see note 8 supra)).

11 For the meaning of 'scheduled call' see PARA 85 note 14 ante.

12 As to the establishment and railway functions of Transport for London see PARA 66 et seq ante; and as to Transport for London generally see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 218, 269 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

13 Railways Act 1993 s 30(3)(ac) (s 30 as substituted (see note 1 supra); s 30(3)(ac) as added (see note 8 supra)).

14 Ie a proposal to which the Railways Act 2005 s 24 (see PARA 147 post) applies: see the Railways Act 1993 s 30(3)(b) (as substituted and amended: see note 17 infra).

15 Ie under ibid s 30 (as substituted and amended): see s 30(3)(b) (as substituted and amended: see note 17 infra).

16 Ie subject to the Railways Act 2005 s 24(7), (8) (see PARA 147 post): see the Railways Act 1993 s 30(3)(b) (as substituted and amended: see note 17 infra). For the meaning of 'notice' see PARA 34 note 4 ante.

17 Ibid s 30(3)(b) (as substituted (see note 1 supra); amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 4(a), (b)). The text refers to the proposal date specified for the purposes of the Railways Act 2005 s 24(5)(a)(ii) (see PARA 147 post): see the Railways Act 1993 s 30(3)(b) (as so substituted and amended).

18 Ibid s 30(3)(c) (as substituted: see note 1 supra). Head (6) in the text refers to providing or securing the provision of any of the services in any case falling within any of specified provisions of the Railways Act 2005 s 24 (see PARA 147 post): see the Railways Act 1993 s 30(3)(c) (as so substituted). The Queen's Printers copy specifies the relevant provisions for the purposes of s 30(3)(c) (as substituted) to be the Railways Act 2005 s 24(2)(a)-(d). However, s 24(2)(c), (d) do not exist and it is submitted that a reference to s 24(3)(a)-(d) is intended: see heads (6)(a) to (6)(d) in the text.

19 Railways Act 1993 s 30(3)(c) (as substituted: see note 1 supra); Railways Act 2005 s 24(3)(a). See note 18 supra. For the meaning of 'experimental passenger services' see PARA 161 note 2 post.

20 Railways Act 1993 s 30(3)(c) (as substituted: see note 1 supra); Railways Act 2005 s 24(3)(b). See note 18 supra. As to the Channel Tunnel see PARA 324 post.

21 Railways Act 1993 s 30(3)(c) (as substituted: see note 1 supra); Railways Act 2005 s 24(3)(c). See note 18 supra.

22 Railways Act 1993 s 30(3)(c) (as substituted: see note 1 supra); Railways Act 2005 s 24(3)(d). Head (6)(d) in the text refers to services excluded from the application of s 24 by an order under s 38 (services, networks and stations excluded by order of national authority: see PARA 163 post): see s 24(3)(d); and PARA 147 post. See note 18 supra.

23 Ie the duty under the Railways Act 1993 s 30(1) (as substituted and amended) (see the text and notes 1-3 supra): see s 30(2) (as substituted and amended: see note 24 infra).

24 Ibid s 30(2) (as substituted (see note 1 supra); amended by the Railways Act 2005 Sch 1 Pt 1 para 20(3)).

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D. TRANSFER MECHANISMS

139. Transfer of assets, etc when franchise agreements entered into.

It is the duty of the appropriate franchising authority¹ before entering into a franchise agreement² to satisfy itself that if the franchise agreement is entered into³:

- 483 (1) the initial franchise assets⁴ (if any) for that franchise agreement will be vested in the person who is to be the franchise operator⁵; and
- 484 (2) if the franchise agreement is to be one under which the franchisee⁶ undertakes to secure that a wholly owned subsidiary⁷ of his provides the franchised services⁸, that the franchise operator will be a wholly owned subsidiary of the franchisee⁹.

After a franchise agreement has been entered into, it is the duty of the appropriate franchising authority, before any property, rights or liabilities are subsequently designated as franchise assets in accordance with the terms of, or by amendment to, the franchise agreement, to satisfy itself that, if the property, rights or liabilities in question are so designated, they will be vested in the franchise operator¹⁰.

Without the consent¹¹ of the appropriate franchising authority, the franchise operator must not¹²:

- 485 (a) if and to the extent that the franchise assets are property or rights: (i) transfer or agree to transfer, or create or agree to create any security¹³ over, any franchise assets or any interest in, or right over, any franchise assets¹⁴; or (ii) create or extinguish, or agree to create or extinguish, any interest in, or right over, any franchise assets¹⁵; and
- 486 (b) if and to the extent that the franchise assets are liabilities, must not enter into any agreement under which any such liability is released or discharged, or transferred to some other person¹⁶.

Where the franchise agreement is one under which the franchisee undertakes to secure that a wholly owned subsidiary of his provides the franchised services, the franchisee must not, without the consent of the appropriate franchising authority, take any action which would result in the franchise operator ceasing to be a wholly owned subsidiary of his¹⁷. Any such transaction which is entered into without the consent of the appropriate franchising authority¹⁸ is void¹⁹. In England and Wales²⁰, no execution or other legal process may be commenced or continued, and no distress may be levied, against any property which is, or rights which are, franchise assets in the case of any franchise agreement²¹.

In any case where:

- 487 (A) there are to be initial franchise assets in relation to a franchise agreement²²;
- 488 (B) a franchise agreement is to be one which provides for subsequent designation of property, rights or liabilities as franchise assets²³; or

489 (c) property, rights or liabilities are to be designated as franchise assets by an amendment made to a franchise agreement²⁴,

the appropriate franchising authority must ensure that the franchise agreement includes provision specifying, or providing for the determination of, amounts to be paid in respect of the property, rights and liabilities which, immediately before the end of the franchise period²⁵, constitute the franchise assets in relation to that franchise agreement if and to the extent that they are transferred by a scheme²⁶ at or after the end of that period²⁷.

Without prejudice to the generality of the provisions that may be included in a franchise agreement with respect to the acquisition, provision, disposal or other transfer of property, rights or liabilities (whether franchise assets or not), the appropriate franchising authority may undertake in a franchise agreement to exercise its powers to make a transfer scheme at the end of a franchising agreement²⁸ to transfer franchise assets to itself or another in such circumstances as may be specified in the franchise agreement²⁹.

The appropriate franchising authority must ensure that every franchise agreement includes such provision (if any) as it may consider appropriate in the particular case for the purpose of securing³⁰ that the franchise assets are adequately maintained, protected and preserved³¹; and that, at the end of the franchise period, possession of such of the franchise assets as may be specified for the purpose in the agreement (or by the appropriate franchising authority in accordance with the agreement) is delivered up to the appropriate franchising authority or such other person as may be so specified³².

1 I.e., for these purposes, the Secretary of State: see PARA 133 note 1 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, i.e. the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante. As to the duty of the national authority to exercise its franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante.

2 For the meaning of 'franchise agreement' see PARA 130 note 4 ante.

3 Railways Act 1993 s 27(1) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 17(1), (2)(b); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 17(1)).

4 For these purposes, 'franchise assets', in relation to any franchise agreement, means:

99 (1) any property, rights or liabilities which are designated as franchise assets in the franchise agreement as originally made ('initial franchise assets') (Railways Act 1993 ss 27(11)(a), 83(1)); and

100 (2) any property, rights or liabilities which, after the making of the franchise agreement, are designated as franchise assets in accordance with the terms of, or by an amendment made to, the franchise agreement (ss 27(11)(b), 83(1)),

but does not include any property, rights or liabilities which, in accordance with the terms of, or by an amendment made to, the franchise agreement, have for the time being ceased to be designated as franchise assets (ss 27(11), 83(1)). However, no rights or liabilities under contracts of employment are to be designated as franchise assets: s 27(12). Nothing in the Railways Act 1993 affects the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (as to which see EMPLOYMENT vol 39 (2009) PARA 111 et seq) in their application in relation to a relevant transfer within the meaning of those regulations: Railways Act 1993 s 151(6).

5 Ibid s 27(1)(a). For the meaning of 'franchise operator' see PARA 130 note 4 ante.

6 For the meaning of 'franchisee' see PARA 130 note 4 ante.

7 For the meaning of 'wholly owned subsidiary' see PARA 7 note 4 ante.

8 For the meaning of 'franchised services' see PARA 130 note 4 ante.

9 Railways Act 1993 s 27(1)(b).

10 Ibid s 27(2) (amended by the Transport Act 2000 Sch 16 paras 8, 17(1), (2)(b); and the Railways Act 2005 Sch 1 Pt 1 para 17(1)).

11 Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

12 Ibid s 27(3) (amended by the Railways Act 2005 Sch 1 Pt 1 para 17(1)).

13 For these purposes, 'security' means any mortgage, charge, lien or other security: see the Insolvency Act 1986 s 248(b); definition applied by the Railways Act 1993 s 27(13).

14 Ibid s 27(3)(a)(i).

15 Ibid s 27(3)(a)(ii).

16 Ibid s 27(3)(b).

17 Ibid s 27(4) (amended by the Railways Act 2005 Sch 1 Pt 1 para 17(1)).

18 Ie in contravention of the Railways Act 1993 s 27(3), (4) (as amended) (see the text and notes 11-17 supra): see s 27(5).

19 Ibid s 27(5).

20 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

21 Railways Act 1993 s 27(6). The purpose of this provision is to prevent the seizure by judgment creditors of property or rights which are designated as franchise assets, enabling the appropriate franchising authority to protect the availability of such assets and to provide for their smooth transfer from one franchisee to the next: 547 HL Official Report (5th series), 5 July 1993, col 1154.

22 Railways Act 1993 s 27(8)(a).

23 Ibid s 27(8)(b).

24 Ibid s 27(8)(c).

25 For the meaning of 'franchise period' see PARA 130 note 4 ante.

26 Ie a scheme under the Railways Act 2005 s 12 (see PARA 140 post): see the Railways Act 1993 s 27(8) (as amended: see note 27 infra).

27 Ibid s 27(8) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 24(1), (2); and the Railways Act 2005 Sch 1 Pt 1 para 17(1), (2)).

28 Ie under the Railways Act 2005 s 12 (see PARA 140 post): see the Railways Act 1993 s 27(9) (as amended: see note 29 infra).

29 Ibid s 27(9) (amended by the Transport Act 2000 Sch 16 paras 8, 17(1), (5)(b), (c); and the Railways Act 2005 Sch 1 Pt 1 para 17(1)).

30 Railways Act 1993 s 27(10) (amended by the Transport Act 2000 Sch 16 paras 8, 17(1), (5)(b); and the Railways Act 2005 Sch 1 Pt 1 para 17(1), (2)).

31 Railways Act 1993 s 27(10)(a).

32 Ibid s 27(10)(b) (amended by the Railways Act 2005 Sch 1 Pt 1 para 17(1)).

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140. Power to make transfer scheme at end of franchising agreement.

Where a franchise agreement¹ is or has been in force², the appropriate national authority³ may make a scheme for the transfer, at or after the end of the franchise period⁴, of relevant franchise assets⁵ from the franchise company⁶ to a person (or to two or more of those persons), specified as follows⁷:

- 490 (1) the Secretary of State (or the Scottish Ministers)⁸;
- 491 (2) a company which is wholly owned by the Secretary of State (or the Scottish Ministers)⁹;
- 492 (3) a company which is jointly owned by the Secretary of State and the Scottish Ministers¹⁰; or
- 493 (4) a franchise company¹¹.

Before making such a scheme, the appropriate national authority must consult every person to whom relevant franchise assets would be transferred under the proposed scheme¹².

On the day on which such a scheme comes into force¹³: (a) the transferee or transferees¹⁴ must pay to the transferor¹⁵; or (b) the transferor must pay to the transferee or transferees¹⁶, such sums as may be specified in (or determined in accordance with) the franchise agreement¹⁷, subject to any other agreement between the transferor and the transferee or transferees¹⁸.

1 For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by the Railways Act 2005 s 58(2).

2 Ibid s 12(1).

3 For these purposes, 'appropriate national authority' means, in relation to a franchise agreement to which the Secretary of State is a party, the Secretary of State: *ibid* s 12(8)(a). In relation to a franchise agreement to which the Scottish Ministers are a party, the Scottish Ministers are the 'appropriate national authority': see s 12(8)(b). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 2005, see PARA 33 ante. As to the duty of the national authority to exercise its franchising function to encourage investment in the railways see PARA 36 ante; and as to the keeping of a register by the national authority including provisions relating to franchises see PARA 37 ante.

4 For the meaning of 'franchise period' see PARA 130 note 4 ante; definition applied by *ibid* s 58(2).

5 For these purposes, 'relevant franchise assets' means property, rights and liabilities which, immediately before the end of the franchise period which is ending or has ended, will be or were designated as franchise assets for the purposes of the agreement: *ibid* s 12(8). For the meaning of 'franchise assets' see PARA 139 note 4 ante; definition applied by s 58(2).

6 For these purposes, 'franchise company' means a person who is, or is to be, the franchisee or the franchise operator under a franchise agreement: *ibid* s 12(8). For the meanings of 'franchise operator' and 'franchisee' see PARA 130 note 4 ante; definitions applied by s 58(2).

7 *Ibid* s 12(2). Supplemental provisions about transfer schemes made under s 12 are contained in s 12(7), Sch 2: see PARA 141 et seq post.

The appropriate franchising authority may undertake in a franchise agreement to exercise its powers under s 12 in such circumstances as may be specified in the franchise agreement: see PARA 139 ante.

8 Ibid s 12(3)(a). As to the Scottish Ministers see PARA 124 note 7 ante.

9 Ibid s 12(3)(b). For the meaning of 'wholly owned by a person' for these purposes see PARA 46 note 24 ante.

10 Ibid s 12(3)(c). For the meaning of 'jointly owned by a person' for these purposes see PARA 46 note 24 ante.

11 Ibid s 12(3)(d).

12 Ibid s 12(4).

13 Ibid s 12(5). Such a scheme comes into force on the date appointed by the scheme: see Sch 2 para 1(2); and PARA 141 post.

14 For these purposes, 'transferee', in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme: ibid s 12(8).

15 Ibid s 12(5)(a). For these purposes, 'transferor', in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme: s 12(8).

16 Ibid s 12(5)(b).

17 Ibid s 12(5).

18 Ibid s 12(6). As to taxation provisions made in relation to transfer schemes under s 12 see s 53, Sch 10.

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141. Application and scope of transfer scheme.

A scheme for the transfer, at or after the end of the franchise period¹, of relevant franchise assets², may set out the property, rights³ and liabilities to be transferred in one or more of the following ways⁴:

- 494 (1) by specifying or describing them in particular⁵;
- 495 (2) by identifying them generally by reference to an undertaking from which they are to be transferred⁶; or
- 496 (3) by identifying them by reference to a specified part of such an undertaking⁷.

Such a scheme comes into force on the date appointed by the scheme⁸.

The property, rights and liabilities that may be transferred by such a scheme include⁹:

- 497 (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor¹⁰;
- 498 (b) property acquired in the period after the making of the scheme and before it comes into force, and rights and liabilities arising in that period¹¹;
- 499 (c) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force¹²;
- 500 (d) rights and liabilities under an enactment, Community instrument or subordinate legislation¹³.

The transfers to which effect may be given by such a scheme include transfers that are to take effect in accordance with the scheme as if there were¹⁴:

- 501 (i) no such requirement to obtain a person's consent or concurrence¹⁵;
- 502 (ii) no such liability in respect of a contravention of any other requirement¹⁶; and
- 503 (iii) no such interference with any interest or right¹⁷,

as there would be¹⁸ by reason of any provision¹⁹ which has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates²⁰.

1 For the meaning of 'franchise period' see PARA 130 note 4 ante.

2 I.e a scheme under the Railways Act 2005 s 12 (see PARA 140 ante): see s 12(7), Sch 2 para 12(1). For the meaning of 'relevant franchise assets' see PARA 140 note 5 ante. The provisions of Sch 2 apply equally to schemes made under s 1(2) (ie schemes for the transfer of property, rights and liabilities, either from the Strategic Rail Authority or from a company wholly owned by that Authority) to persons specified in s 1(3): see PARA 46 ante.

3 References in *ibid* Sch 2 to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right's arising include references to its becoming exercisable: Sch 2 para 12(2).

4 *Ibid* Sch 2 para 1(1).

5 Ibid Sch 2 para 1(1)(a).

6 Ibid Sch 2 para 1(1)(b).

7 Ibid Sch 2 para 1(1)(c).

8 Ibid Sch 2 para 1(2).

Where such a scheme provides for the transfer of property, rights or liabilities (or for the creation of interests, rights or liabilities), the Railways Act 2005 has the effect that, at the time when the scheme comes into force, the property or interests, rights or liabilities vest, without further assurance, in the transferee; and the provisions of that scheme in relation to that property or those interests, rights or liabilities have effect from that time: Sch 2 para 5(1). This is subject to a proviso in relation to schemes under s 1(2) (see PARA 46 ante): see Sch 2 para 2(4)-(6), Sch 2 para 5(2). For these purposes, 'transferee', in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and, in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created: Sch 2 para 12(1).

9 Ibid Sch 2 para 2(1).

10 Ibid Sch 2 para 2(1)(a). For these purposes, 'transferor', in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme; and, in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created: Sch 2 para 12(1).

11 Ibid Sch 2 para 2(1)(b).

12 Ibid Sch 2 para 2(1)(c).

13 Ibid Sch 2 para 2(1)(d).

14 Ibid Sch 2 para 2(2).

15 Ibid Sch 2 para 2(2)(a).

16 Ibid Sch 2 para 2(2)(b).

17 Ibid Sch 2 para 2(2)(c).

18 Ie in the case of a transaction apart from the Railways Act 2005: see Sch 2 para 2(2).

19 Ibid Sch 2 para 2(2). The text refers to a provision falling within Sch 2 para 2(3) (see the text and note 20 infra): see Sch 2 para 2(2).

20 Ibid Sch 2 para 2(3).

The provisions of Sch 2(2), (3) have effect, where shares in a subsidiary of the transferor are or are to be transferred, as if the reference in Sch 2 para 2(3) to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect: Sch 2 para 2(6). For these purposes, 'subsidiary' has the same meaning as in the Companies Act 1985 s 736 (definition as substituted; prospectively repealed) (see further COMPANIES vol 14 (2009) PARA 25): Railways Act 2005 Sch 2 para 12(1).

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142. Provision that may be made by transfer scheme.

A scheme for the transfer, at or after the end of the franchise period¹, of relevant franchise assets², may contain provision³:

- 504 (1) for the creation, in favour of a transferor⁴ or transferee⁵, of an interest or right⁶ in or in relation to property to be transferred in accordance with the scheme⁷;
- 505 (2) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property to be retained by a transferor⁸;
- 506 (3) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor⁹;
- 507 (4) for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees, or between a transferee and a transferor¹⁰;
- 508 (5) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee, or by or against both the transferee and the transferor¹¹; and for rights and liabilities enforceable against more than one person in accordance with such provision¹² to be enforceable in different or modified respects by or against each or any of them¹³;
- 509 (6) for interests, rights or liabilities of third parties¹⁴ in relation to anything to which the scheme relates to be modified in the manner set out in the scheme¹⁵;
- 510 (7) for imposing on a transferee or a transferor an obligation¹⁶: (a) to enter into such agreements with another person on whom a corresponding obligation is (or could be or has been) so imposed¹⁷ (whether in the same or a different scheme)¹⁸; or (b) to execute such instruments in favour of any such person¹⁹, as may be specified or described in the scheme²⁰;
- 511 (8) for some or all of specified powers and duties relating to property, works and land²¹: (a) to be transferred to a transferee²²; (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees²³; or (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee²⁴.

Such a scheme may make such incidental, supplemental, consequential and transitional provision in connection with the transfers to be made in accordance with the scheme as the person making the scheme thinks fit²⁵, and may make different provision for different cases²⁶. In particular, such a scheme may make provision, in relation to transfers in accordance with the scheme²⁷:

- 512 (i) for the transferee to be treated as the same person in law as the transferor²⁸;
- 513 (ii) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee²⁹;

- 514 (iii) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme³⁰; and
- 515 (iv) for proceedings commenced by or against the transferor to be continued by or against the transferee³¹.

Where the transferor and transferee under such a scheme that has come into force³² so agree, the scheme is to be treated for all purposes as having come into force with such modifications as may be agreed³³. The provision that may be included in such an agreement includes any provision that could have been contained in the scheme³⁴, and incidental, supplemental, consequential and transitional provisions in connection with any such provision³⁵.

1 For the meaning of 'franchise period' see PARA 130 note 4 ante.

2 I.e. a scheme under the Railways Act 2005 s 12 (see PARA 140 ante): see s 12(7), Sch 2 para 12(1). For the meaning of 'relevant franchise assets' see PARA 140 note 5 ante. The provisions of Sch 2 apply equally to schemes made under s 1(2) to persons specified in s 1(3): see PARA 46 ante.

3 Ibid Sch 2 para 3(1).

4 For the meaning of 'transferor' for these purposes see PARA 141 note 10 ante.

5 For the meaning of 'transferee' for these purposes see PARA 141 note 8 ante.

6 The Railways Act 2005 Sch 2 para 2(2), (3) (see PARA 141 ante) applies to the creation of interests and rights in accordance with such a scheme as it applies to the transfer of interests and rights: Sch 2 para 3(6). As to the meaning of references to a right (or to an entitlement to a right) for these purposes see PARA 141 note 3 ante.

7 Ibid Sch 2 para 3(1)(a).

8 Ibid Sch 2 para 3(1)(b).

9 Ibid Sch 2 para 3(1)(c).

10 Ibid Sch 2 para 3(2).

11 Ibid Sch 2 para 3(3)(a).

12 I.e. in accordance with provision falling within ibid Sch 2 para 3(3)(a) (see the text and note 11 supra): see Sch 2 para 3(3)(b).

13 Ibid Sch 2 para 3(3)(b).

14 For these purposes, 'third party', in relation to a scheme, means a person other than the transferor and the transferee: ibid Sch 2 para 3(5).

15 Ibid Sch 2 para 3(4).

16 Ibid Sch 2 para 4(1). An obligation imposed on a person by virtue of Sch 2 para 4(1) is enforceable by the relevant person in civil proceedings for an injunction (or for any other appropriate remedy or relief): Sch 2 para 4(2). The relevant person for these purposes is the person with (or in favour of whom) the agreement or instrument is to be entered into or executed: Sch 2 para 4(3).

17 I.e. imposed by virtue of ibid Sch 2 para 4: see Sch 2 para 4(1)(a).

18 Ibid Sch 2 para 4(1)(a).

19 Ibid Sch 2 para 4(1)(b).

20 Ibid Sch 2 para 4(1).

21 Ibid Sch 2 para 6(1). The powers and duties to which Sch 2 para 6 applies are the powers and duties conferred or imposed upon the transferor by or under a relevant enactment so far as they relate to: (1) property to be transferred in accordance with the scheme (Sch 2 para 6(2)(a)); (2) the carrying out of works designed to be used in connection with such property (Sch 2 para 6(2)(b)); or (3) the acquisition of land for the purpose of the carrying out of such works (Sch 2 para 6(2)(c)). For these purposes, 'relevant enactment' means any enactment other than the Railways Act 1993, the Transport Act 2000 Pt 4 (ss 212-254) (as amended) (see PARA 44 et seq ante) or the Railways Act 2005: Sch 2 para 6(3).

22 Ibid Sch 2 para 6(1)(a). The provision made by Sch 2 para 6 does not require a restrictive construction to be given to what may be transferred by virtue of Sch 2 para 2(1)(d) (see PARA 141 ante): Sch 2 para 6(4).

23 Ibid Sch 2 para 6(1)(b). See note 22 supra.

24 Ibid Sch 2 para 6(1)(c). See note 22 supra.

25 Ibid Sch 2 para 7(1)(a). For these purposes, references to a transfer in accordance with a scheme include references to the creation of an interest, right or liability in accordance with a scheme: Sch 2 para 7(4).

26 Ibid Sch 2 para 7(1)(b).

27 Ibid Sch 2 para 7(2).

28 Ibid Sch 2 para 7(2)(a).

29 Ibid Sch 2 para 7(2)(b).

30 Ibid Sch 2 para 7(2)(c). Head (iii) in the text does not apply to references in an enactment or in subordinate legislation: Sch 2 para 7(3).

31 Ibid Sch 2 para 7(2)(d).

32 Such a scheme comes into force on the date appointed by the scheme: see *ibid* Sch 2 para 1(2); and PARA 141 ante.

33 Ibid Sch 2 para 8(1). However, such an agreement which relates to rights and liabilities under a contract of employment may be entered into only if the employee is a party to the agreement (Sch 2 para 8(2)); and such an agreement that adversely affects the property or rights of a person other than the transferor, the transferee or such an employee may be entered into only if that person is a party to the agreement (Sch 2 para 8(3)).

34 Ibid Sch 2 para 8(4)(a).

35 Ibid Sch 2 para 8(4)(b).

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143. Protections provided by transfer scheme.

Where, in accordance with a scheme for the transfer, at or after the end of the franchise period¹, of relevant franchise assets², a person employed by a transferor³ becomes an employee of a transferee⁴:

- 516 (1) he is not to be regarded for the purposes of the Employment Rights Act 1996⁵ as having been dismissed by virtue of the transfer⁶;
- 517 (2) his period of employment with the transferor counts for the purposes of the Employment Rights Act 1996 as a period of employment with the transferee⁷;
- 518 (3) the change of employment does not break the continuity of the period of employment either for the purposes of the Employment Rights Act 1996 or for the purposes of the provisions of the Railways Act 1993 relating to pensions⁸;
- 519 (4) in a case in which the transferee is not engaged in the railway industry, that person's period of employment with the transferee is to be disregarded for the purpose of determining whether the termination conditions⁹ are fulfilled in his case¹⁰.

Where: (a) an entitlement of a third party¹¹ to an interest or right¹² would¹³ become enforceable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities¹⁴; (b) the provisions of that scheme¹⁵ have the effect of preventing the third party's entitlement to that interest or right from being enforced in respect of anything for which the scheme provides¹⁶; and (c) provision is not made by the scheme for securing that an entitlement to that interest or right (or to an equivalent interest or right) is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides¹⁷, the third party is entitled to compensation in respect of the extinguishment of his entitlement¹⁸. The amount of compensation to which a third party is so entitled is the amount necessary for securing (to the extent that it is just to do so) that he does not suffer financial loss from the extinguishment of his entitlement¹⁹; and a liability to pay such compensation falls on the Secretary of State²⁰.

1 For the meaning of 'franchise period' see PARA 130 note 4 ante.

2 Ie a scheme under the Railways Act 2005 s 12 (see PARA 140 ante): see s 12(7), Sch 2 para 12(1). For the meaning of 'relevant franchise assets' see PARA 140 note 5 ante.

The provisions of Sch 2 apply equally to schemes made under s 1(2) (ie schemes for the transfer of property, rights and liabilities, either from the Strategic Rail Authority or from a company wholly owned by that Authority) to persons specified in s 1(3): see PARA 46 ante.

3 For the meaning of 'transferor' for these purposes see PARA 141 note 10 ante.

4 Railways Act 2005 Sch 2 para 9(1). For these purposes, references to becoming an employee of the transferee and to employment with the transferee include references, respectively, to becoming and to being employed in the civil service of the state: Sch 2 para 9(2). For the meaning of 'transferee' for these purposes see PARA 141 note 8 ante.

5 Ie the Employment Rights Act 1996 Pt XI (ss 135-181) (as amended) (redundancy payments etc: see EMPLOYMENT vol 40 (2009) PARA 790 et seq): see the Railways Act 2005 Sch 2 para 9(1)(a).

6 Ibid Sch 2 para 9(1)(a).

7 Ibid Sch 2 para 9(1)(b).

8 Ibid Sch 2 para 9(1)(c). The text refers to the provisions of the Railways Act 1993 s 134(1), Sch 11 (as amended) (pension schemes: see PARA 7 et seq ante): see the Railways Act 2005 Sch 2 para 9(1)(c).

9 Ie under the Railways Act 1993 Sch 11 para 8 (entitlement to participate in the joint industry scheme: see PARA 11 ante): see the Railways Act 2005 Sch 2 para 9(1)(d).

10 Ibid Sch 2 para 9(1)(d).

11 For the purposes of ibid Sch 2 para 10(1)-(3) (see the text and notes 12-20 infra), 'third party', in relation to a scheme, means a person other than the transferor and the transferee: Sch 2 para 10(4).

12 As to the meaning of references to a right (or to an entitlement to a right) for these purposes see PARA 141 note 3 ante.

13 Ie apart from a provision of a scheme under the Railways Act 2005 s 1(2) and Sch 2 para 2(4), (5) (as to which see PARA 141 note 8 ante): see Sch 2 para 10(1)(a).

The provisions of Sch 2 para 10 have effect in relation to the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme under s 1(2), and in relation to the provisions of an agreement under Sch 2 para 8 (modification of scheme by agreement: see PARA 142 ante) relating to property, rights or liabilities transferred or created in accordance with such a scheme, as it has effect in relation to the scheme but as if, in the case of an agreement under Sch 2 para 8, only persons who are not parties to the agreement were third parties: see Sch 2 para 10(5).

14 Ibid Sch 2 para 10(1)(a).

15 Ie or of ibid Sch 2 para 2(4), (5) (as to which see PARA 141 note 8 ante): see Sch 2 para 10(1)(b).

16 Ibid Sch 2 para 10(1)(b).

17 Ibid Sch 2 para 10(1)(c).

18 Ibid Sch 2 para 10(1).

19 Ibid Sch 2 para 10(2).

20 Ibid Sch 2 para 10(3). As to the Secretary of State see PARA 35 ante.

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144. Provision of information to person making transfer scheme.

A person who proposes to make a scheme for the transfer, at or after the end of the franchise period¹, of relevant franchise assets² (the 'scheme authority') may direct³ either a proposed transferor⁴ or a proposed transferee⁵ to provide him with such information as he considers necessary to enable him to make the scheme⁶. Such a direction must specify the period within which the information is to be provided⁷, and the period so specified must be not less than 28 days beginning with the day of the giving of the direction⁸.

If a person fails to comply with such a direction, the scheme authority may serve a notice on him requiring him⁹:

520 (1) to produce to the scheme authority any documents which are specified or described in the notice and are in his custody or under his control¹⁰; or

521 (2) to provide to the scheme authority such information as may be specified or described in the notice¹¹.

If a person fails to comply with such a notice, the High Court may, on the application of the scheme authority, make such order as the court thinks fit for requiring the failure to be made good¹². A person who intentionally alters, suppresses¹³ or destroys a document which he has been required to produce by such a notice¹⁴ is guilty of an offence¹⁵.

1 For the meaning of 'franchise period' see PARA 130 note 4 ante.

2 I.e. a scheme under the Railways Act 2005 s 12 (see PARA 140 ante); see s 12(7), Sch 2 para 12(1). For the meaning of 'relevant franchise assets' see PARA 140 note 5 ante.

The provisions of Sch 2 apply equally to schemes made under s 1(2) (ie schemes for the transfer of property, rights and liabilities, either from the Strategic Rail Authority or from a company wholly owned by that Authority) to persons specified in s 1(3): see PARA 46 ante.

3 Ibid Sch 2 para 11(1).

4 Ibid Sch 2 para 11(1)(a). For the meaning of 'transferor' for these purposes see PARA 141 note 10 ante.

5 Ibid Sch 2 para 11(1)(b). For the meaning of 'transferee' for these purposes see PARA 141 note 8 ante.

6 Ibid Sch 2 para 11(1).

7 Ibid Sch 2 para 11(2).

8 Ibid Sch 2 para 11(3).

9 Ibid Sch 2 para 11(4).

10 Ibid Sch 2 para 11(4)(a).

Documents to be produced in accordance with such a notice must be produced at the time and place, and in the form and manner, specified in the notice: Sch 2 para 11(5). However, no person may be required under Sch 2 para 11 to produce a document which he could not be compelled to produce in civil proceedings in the High Court: Sch 2 para 11(6)(a), (11).

For these purposes, a reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form: Sch 2 para 10(a).

11 Ibid Sch 2 para 11(4)(b).

Information to be provided in accordance with such a notice must be provided at the time and place, and in the form and manner, specified in the notice: Sch 2 para 11(5). However, no person may be required under Sch 2 para 11 to provide information which he could not be compelled to give in evidence in civil proceedings in the High Court: Sch 2 para 11(6)(b), (11).

12 Ibid Sch 2 para 11(8). Any order under Sch 2 para 11(8) may include provision requiring all the costs or expenses of and incidental to the application to be borne by one or more of: (1) the person in default (Sch 2 para 11(9)(a)); (2) any officers of a company or other association who are responsible for its default (Sch 2 para 11(9)(b)).

13 For these purposes, the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form: ibid Sch 2 para 11(10).

14 Ie a notice under ibid Sch 2 para 11(4) (see the text and notes 9-11 supra): see Sch 2 para 11(7).

15 See ibid Sch 2 para 11(7); and PARA 415 post.

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(v) Closures

A. DISCONTINUANCE OF RAILWAY PASSENGER SERVICES

145. Proposal by service operator to discontinue non-franchised services.

In circumstances where:

- 522 (1) all the relevant railway passenger services¹ on a particular line or from a particular station are provided otherwise than in satisfaction of requirements imposed by a franchise agreement²;
- 523 (2) a proposal for the discontinuance of all the relevant railway passenger services provided on that line, or from that station, is made by the person providing them ('the service operator')³; and
- 524 (3) the proposal is not a proposal for a minor modification⁴,

the service operator must give notice to the national authority⁵ setting out particulars of the proposal to discontinue those services⁶ and a summary of the results of the assessment that is required to have been carried out beforehand⁷.

The national authority to which notice is so given must: (a) consider whether the closure in question should be allowed⁸; and (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance⁹.

If the national authority forms the opinion that the closure should be allowed, it must: (i) carry out a consultation¹⁰ about the proposal¹¹; and (ii) after carrying out that consultation, either notify the service operator that it has changed its opinion or refer the proposal (with or without modifications) to the Office of Rail Regulation¹².

If the national authority forms the opinion under head (a) above that the closure should not be allowed¹³, or if the national authority changes its opinion following the consultation under head (i) above¹⁴, or if, on a reference to the Office of Rail Regulation under head (ii) above, that Office issues a closure non-ratification notice¹⁵, the national authority must secure the provision of the services to which the proposal relates after the end of the interim period¹⁶.

The service operator must not discontinue the services in question before the end of the interim period¹⁷; and the duty imposed on the national authority to secure any services¹⁸ ceases if the services begin to be provided under a franchise agreement¹⁹.

¹ References in the Railways Act 2005 s 22(1) (see heads (1) to (3) in the text) to relevant railway passenger services are references to railway passenger services that are not:

- 101 (1) secured services (s 22(2)(a));
- 102 (2) experimental passenger services (s 22(2)(b));
- 103 (3) services involving travel through the Channel Tunnel (s 22(2)(c));

104 (4) services that are provided otherwise than as regular scheduled services for the line or station in question (s 22(2)(d)); or

105 (5) services excluded from the application of s 22 by an order under s 38 (as to which see PARA 163 post) (s 22(2)(e)).

For the purposes of Pt 4 (ss 22-45), 'secured service' means a service which is provided by or on behalf of the Secretary of State (or the Scottish Ministers) under the Railways Act 1993 s 30 (as substituted and amended) (as to which see PARA 138 ante), under the Railways Act 2005 s 22(9) (see the text and notes 13-16 infra), s 23(7) (proposal by funding authority to discontinue non-franchised services: see PARA 146 post) or s 24(7), (8) (proposal to discontinue franchised or secured services: see PARA 147 post) or under a requirement imposed under s 33(2) (closure ratification notice issued by the Office of Rail Regulation: see PARA 158 post): s 45(1). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by s 58(2). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante. As to the Channel Tunnel see PARA 324 post.

2 Railways Act 2005 s 22(1)(a). For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by s 58(2).

3 Ibid s 22(1)(b).

4 Ibid s 22(1)(c). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

5 Ie, for these purposes, the Secretary of State: see *ibid* s 22(11). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2).

In the case of a proposal relating to services all of which are Scotland-only services, 'national authority' means the Scottish Ministers: see s 22(11). For these purposes, 'Scotland-only service' means a railway passenger service which starts and ends in Scotland and is not a cross-border service: see the Railways Act 1993 s 83(1); definition applied by the Railways Act 2005 s 58(2). For the meaning of 'cross-border service' see PARA 130 note 4 ante; definition applied by s 58(2).

6 Ibid s 22(3)(a). The particulars set out in the notice must include, in particular, the services to which the proposal relates (s 22(4)(a)); and the proposal date (s 22(4)(b)). For these purposes, 'proposal date', in relation to a proposal for the discontinuance of any service or services (or any network or station or part of a network or station) means the date after which, according to the proposal, the service or services will no longer be provided (or, as the case may be, the operation or use of the network or station or part of a network or station will be discontinued): s 45(1). For the purposes of s 22(3), (4)(b), the proposal date must be a date not less than three months after the date of the notice: s 22(4). For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 58(2). As to proposals for the discontinuance of any network or part of a network see PARA 149 et seq post; and as to proposals for the discontinuance of any station or part of a station see PARA 152 et seq post.

7 Ibid s 22(3)(b). The text refers to an assessment carried out in accordance with s 22(5): see s 22(3). Accordingly, before giving the notice under s 22(3), the service operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 22(5). For the purposes of Pt 4, 'closures guidance' means the guidance published under s 42 (as to which see PARA 156 post); and references to the relevant part of the closures guidance are to be construed in accordance with s 45(2): s 45(1). Accordingly, for these purposes, 'the relevant part of the closures guidance' means: (1) in relation to a proposal to discontinue any railway passenger service or services, the part of the closures guidance relating to the discontinuance of any such services that is applicable to that proposal (s 45(2)(a)); (2) in relation to a proposal to discontinue the operation of a network or part of a network, the part of the closures guidance relating to the discontinuance of the operation of networks or parts of networks that is applicable to that proposal (s 45(2)(b)); and (3) in relation to a proposal to discontinue the use or operation of a station or part of a station, the part of the closures guidance relating to the discontinuance of the use or operation of such stations or parts of such stations that is applicable to that proposal (s 45(2)(c)). For the purposes of Pt 4, 'closure' means: (a) the discontinuance of a railway passenger service or of railway passenger services; (b) the discontinuance of the operation of the whole or a part of a network; or (c) the discontinuance of the use or operation of the whole or a part of a station: s 45(1).

8 Ibid s 22(6)(a).

9 Ibid s 22(6)(b).

10 Ie under ibid Sch 7 (as to which see PARA 155 post): see s 22(7)(a).

11 Ibid s 22(7)(a).

12 Ibid s 22(7)(b). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

13 Railways Act 2005 s 22(9)(a).

14 Ibid s 22(9)(b).

15 Ibid s 22(9)(c). For the meaning of 'closure non-ratification notice' see PARA 157 post.

16 Ibid s 22(9). For the purposes of Pt 4, 'interim period', in relation to a proposal for the discontinuance of any service or services, or any network or station or part of a network or station, is a period ending:

106 (1) in a case where the national authority forms the opinion in accordance with the criteria set out in the relevant part of the closures guidance that the proposal should not be allowed, with the proposal date (s 45(3)(a)); and

107 (2) otherwise, as the case may be:

6. (a) with the date on which notification is given to the person who made the proposal that the national authority has changed its opinion with respect to the proposal (s 45(3)(b)(i));

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7. (b) with the withdrawal of the proposal (s 45(3)(b)(ii)); or

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8. (c) four weeks after the date on which a closure ratification notice or closure non-ratification notice is issued by the Office of Rail Regulation on any reference to it relating to the proposal (s 45(3)(b)(iii));

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and the 'end of the interim period' must be construed accordingly (see s 45(1)). For the meaning of 'closure ratification notice' see PARA 157 post.

17 Ibid s 22(8).

As to enforcement provisions in relation to the duty under s 22(8) see PARA 179 et seq post. Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders) (see PARA 182 post), any obligation of a person under the Railways Act 2005 s 22(8) not to discontinue a railway passenger service does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(a).

18 Ie under ibid s 22(9) (see the text and notes 13-16 supra): see s 22(10).

19 Ibid s 22(10).

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146. Proposal by funding authority to discontinue non-franchised services.

In circumstances where:

- 525 (1) all the relevant railway passenger services¹ on a particular line or from a particular station are provided otherwise than in satisfaction of requirements imposed by a franchise agreement²;
- 526 (2) a proposal for the discontinuance of all the relevant railway passenger services provided on that line, or from that station, is duly made³ by a railway funding authority⁴; and
- 527 (3) the proposal is not a proposal for a minor modification⁵,

the railway funding authority making the proposal must: (a) give notice of its proposal to the national authority⁶, if it is not itself that authority⁷; (b) carry out a consultation⁸ about the proposal⁹; and (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation¹⁰.

If arrangements under or in accordance with which the services are being provided do not require the services to be provided until the end of the interim period¹¹, the national authority must secure the provision of the services until the end of that period¹². However, if, on a reference under head (c) above, the Office of Rail Regulation issues a closure non-ratification notice¹³, the national authority must secure the provision of the services to which the proposal relates after the end of the interim period¹⁴.

1 References in the Railways Act 2005 s 23(1) (see heads (1) to (3) in the text) to relevant railway passenger services are references to railway passenger services that are not:

- 108 (1) secured services (s 23(2)(a));
- 109 (2) experimental passenger services (s 23(2)(b));
- 110 (3) services involving travel through the Channel Tunnel (s 23(2)(c));
- 111 (4) services that are provided otherwise than as regular scheduled services for the line or station in question (s 23(2)(d)); or
- 112 (5) services excluded from the application of s 23 by an order under s 38 (as to which see PARA 163 post) (s 23(2)(e)).

For the meaning of 'experimental passenger service' see PARA 161 note 2 post. For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by s 58(2). For the meaning of 'secured services' see PARA 145 note 1 ante. For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2). As to the Channel Tunnel see PARA 324 post.

2 Ibid s 23(1)(a). For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by s 58(2).

3 In accordance with ibid s 41: see s 23(1)(b).

A railway funding authority may make a proposal for the discontinuance of a railway passenger service, if, and only if, the requirements of s 41(3)-(5) are satisfied: s 41(1). For the meaning of 'railway funding authority' see note 4 infra. The requirements of s 41(3), which apply to the making of such a proposal by a railway funding

authority other than a Passenger Transport Executive, the Mayor of London or Transport for London are (see s 41(2), (3)):

- 113 (1) that the proposal is made in association with another proposal by the authority (s 41(3)(a));
- 114 (2) that the other proposal relates to any agreement or other arrangements to which the authority is a party and which relate to the provision of financial assistance in connection with the service (or, as the case may be, the operation or use of the network or station) (s 41(3)(b)); and
- 115 (3) that it appears to the authority that the other proposal would have an effect which is reasonably likely to create or contribute to a need for the service to be discontinued (or, as the case may be, the operation or use of the network or station to be discontinued) (s 41(3)(c)).

The arrangements referred to in head (2) *supra* include arrangements between the railway funding authority in question and another such authority: s 41(6). For the purposes of Pt 4 (ss 22-45), references to financial assistance include references to the making of grants or loans, the giving of guarantees and investments in bodies corporate: s 45(9). As to the giving of financial assistance in connection with railway matters see PARA 39 *et seq ante*.

The requirements of s 41(4), which apply in relation to the making of a proposal by a Passenger Transport Executive, are: (a) that no funding in relation to a service (or, as the case may be, network or station, or part of a network or station) to which the proposal relates is provided by a railway funding authority other than the Passenger Transport Executive (s 41(4)(a)); or (b) that every service to which the proposal relates operates entirely within its area (and every network or station, or part of a network or station, to which the proposal relates is wholly in its area) (s 41(4)(b)). The requirements of s 41(5), which apply in relation to the making of a proposal by the Mayor of London or Transport for London, are: (i) that no funding in relation to a service (or, as the case may be, network or station, or part of a network or station) to which the proposal relates is provided by a railway funding authority other than the Mayor of London or Transport for London (s 41(5)(a)); or (ii) that every service to which the proposal relates operates entirely within Greater London (and that every network or station, or part of a network or station, to which the proposal relates is wholly in Greater London) (s 41(5)(b)). For the purposes of s 41(4), (5), a service operates entirely within an area if it starts and ends in that area and does not make any other scheduled calls outside that area: s 41(7). For the meaning of 'network' see PARA 82 note 8 *ante*; definition applied by s 58(2). For the meaning of 'scheduled call' see PARA 85 note 14 *ante*; definition applied by s 58(2). For the meaning of references to a Passenger Transport Authority, to a Passenger Transport Executive or to a passenger transport area for these purposes see PARA 64 note 3 *ante*. As to the establishment and railway functions of Transport for London see PARAS 66, 67 *ante*. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

4 Ibid s 23(1)(b).

For the purposes of Pt 4, 'railway funding authority' means: (1) the Secretary of State; (2) the Scottish Ministers; (3) the Welsh Ministers; (4) a Passenger Transport Executive; (5) the Mayor of London; (6) Transport for London; (7) a person designated as such an authority by an order under s 45(4): s 45(1). The appropriate authority may by order designate a person as a railway funding authority if: (a) that person is a person on whom functions are conferred by or under any enactment (s 45(4)(a)); and (b) the appropriate authority is satisfied that that person, in the carrying out of those functions, provides financial assistance for purposes that are connected with railways or the provision of railway services (s 45(4)(b)). An order under s 45(4) is subject to the negative resolution procedure: s 45(7). In s 45(4), 'appropriate authority' means, for these purposes, the Secretary of State: see s 45(5), (6), (8). As to the Secretary of State see PARA 35 *ante*; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4, see the Railways Act 1993 s 4 (as amended); and PARA 33 *ante*. As to the Channel Tunnel see PARA 324 *post*. As to Scotland-only services, Scottish majority funding in relation to cross-border services or networks or stations wholly in Scotland, 'appropriate authority' means the Scottish Ministers: see the Railways Act 2005 s 45(5). For the meaning of 'cross-border service' see PARA 130 note 4 *ante*; definition applied by s 58(2). For the meaning of 'Scotland-only service' see PARA 145 note 5 *ante*. As to the Scottish Ministers generally see PARA 124 note 7 *ante*.

5 Ibid s 23(1)(c). For the meaning of 'proposal for a minor modification' see PARA 159 *post*. As to the meaning of 'modification' see PARA 33 note 46 *ante*; definition applied by s 58(2).

6 *Ie*, for these purposes, the Secretary of State: see *ibid* s 23(9). In the case of a proposal relating to services all of which are Scotland-only services, 'national authority' means the Scottish Ministers: see s 23(9). For the meaning of 'notice' see PARA 34 note 4 *ante*; definition applied by s 58(2).

7 Ibid s 23(3)(a). A notice to the national authority under s 23(3)(a) must set out: (1) particulars of the proposal for the closure including, in particular, the services to which the proposal relates (s 23(4)(a)(ii)) and the

proposal date (s 23(4)(a)(ii)); and (2) a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 23(5) (s 23(4)(b)). Accordingly, before giving the notice under s 23(3)(a), in a case where it is not itself the national authority or, in any other case, before carrying out the consultation under s 23(3)(b) (see head (b) in the text) the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 23(5). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante; and for the meaning of 'proposal date' see PARA 145 note 6 ante.

8 Ie under ibid Sch 7 (as to which see PARA 155 post): see s 23(3)(b).

9 Ibid s 23(3)(b). See note 7 supra.

10 Ibid s 23(3)(c). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

11 For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

12 Railways Act 2005 s 23(6).

13 For the meaning of 'closure non-ratification notice' see PARA 157 post.

14 Railways Act 2005 s 23(7). The duty imposed by s 23(7) in relation to any services ceases if the services begin to be provided under a franchise agreement: s 23(8).

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders: see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a railway passenger service does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

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147. Proposals to discontinue franchised or secured services.

In circumstances where:

- 528 (1) all the relevant railway passenger services¹ on a particular line or from a particular station are either a franchised service² or a secured service³;
- 529 (2) a proposal for the discontinuance of all the relevant railway passenger services provided on that line, or from that station, is duly made⁴ by a railway funding authority⁵; and
- 530 (3) the proposal is not a proposal for a minor modification⁶,

the railway funding authority making the proposal must: (a) give notice of its proposal to the national authority⁷, if it is not itself that authority⁸; (b) carry out a consultation⁹ about the proposal¹⁰; and (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation¹¹.

If the franchise agreement¹² or any other arrangement under or in accordance with which the services are being provided does not require the services to be provided until the end of the interim period¹³, the national authority must secure the provision of the services until the end of that period¹⁴. However, if, on a reference under head (c) above, the Office of Rail Regulation issues a closure non-ratification notice¹⁵, the national authority must secure the provision of the services to which the proposal relates after the end of the interim period¹⁶.

1 References in the Railways Act 2005 s 24(1) (see heads (1) to (3) in the text) to relevant railway passenger services are references to railway passenger services that are not:

- 116 (1) experimental passenger services (s 24(3)(a));
- 117 (2) services involving travel through the Channel Tunnel (s 24(3)(b));
- 118 (3) services that are provided otherwise than as regular scheduled services for the line or station in question (s 24(3)(c)); or
- 119 (4) services excluded from the application of s 24 by an order under s 38 (as to which see PARA 163 post) (s 24(3)(d)).

For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by s 58(2). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. As to the Channel Tunnel see PARA 324 post.

2 Ibid s 24(1)(a), (2)(a). For the meaning of 'franchised service' see PARA 130 note 4 ante; definition applied by s 58(2).

3 Ibid s 24(1)(a), (2)(b). For the meaning of 'secured service' see PARA 145 note 1 ante.

4 In accordance with ibid s 41 (see PARA 146 note 3 ante): see s 24(1)(b).

5 Ibid s 24(1)(b). For the meaning of 'railway funding authority' see PARA 146 note 4 ante.

6 Ibid s 24(1)(c). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

7 le, for these purposes, the Secretary of State: see *ibid* s 24(11). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

In the case of a proposal relating to services all of which are Scotland-only services or relevant cross-border services, 'national authority' means the Scottish Ministers: see the Railways Act 2005 s 24(11). For the purposes of s 24(11), a cross-border service is a 'relevant cross-border service' if it: (1) does not begin or end or otherwise make a scheduled call in Wales (s 24(12)(a)); and (2) is a service in respect of which more funding is provided by the Scottish Ministers than the Secretary of State (s 24(12)(b)). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). For the meaning of 'scheduled call' see PARA 85 note 14 ante; definition applied by s 58(2). For the meaning of 'Scotland-only service' see PARA 145 note 5 ante. For the meaning of 'Wales' see PARA 29 note 3 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

8 *Ibid* s 24(4)(a). A notice to the national authority under s 24(4)(a) must set out: (1) particulars of the proposal for the closure including, in particular, the services to which the proposal relates (s 24(5)(a)(i)) and the proposal date (s 24(5)(a)(ii)); and (2) a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 24(6) (s 24(5)(b)). Accordingly, before giving the notice under s 24(4)(a), in a case where it is not itself the national authority or, in any other case, before carrying out the consultation under s 24(4)(b) (see head (b) in the text) the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 24(6). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante; and for the meaning of 'proposal date' see PARA 145 note 6 ante.

9 le under *ibid* Sch 7 (as to which see PARA 155 post): see s 24(4)(b).

10 *Ibid* s 24(4)(b). See note 8 supra.

11 *Ibid* s 24(4)(c). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

12 For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by the Railways Act 2005 s 58(2).

13 For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

14 Railways Act 2005 s 24(7). Nothing in s 24(7) or in s 24(8) (as to which see the text and notes 15-16 infra) requires the Secretary of State to secure the provision of a Welsh service unless it appears to him that he will be receiving funds from the Welsh Ministers that are reasonably equivalent to those provided by them in respect of the service previously provided: s 24(10). The Railways Act 1993 s 30(3)(b) (as substituted and amended) (duty of franchising authority in absence of franchise) is subject to the securing of services under the Railways Act 2005 s 24(7), (8): see PARA 138 ante. For the meaning of 'Welsh services' see PARA 40 note 2 ante.

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders: see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a railway passenger service does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

15 For the meaning of 'closure non-ratification notice' see PARA 157 post.

16 Railways Act 2005 s 24(8). The duty of the national authority under s 24(8) is discharged without its taking further steps so long as the provisions of the franchise agreement or other arrangements, in force at the time of the proposal, so far as they require the provision of the services, continue in force without modification: s 24(9)(a). The duty under s 24(8) ceases if the services begin to be provided under a franchise agreement: s 24(9)(b). See note 14 supra.

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148. Proposal to discontinue excluded services.

Where a proposal for the discontinuance of all the excluded services¹ provided by a particular person ('the service operator') on a particular line, or from a particular station², is made by the service operator³, the service operator must give notice⁴ to the national authority setting out: (1) particulars of the proposal to discontinue the services⁵; and (2) a summary of the results of the assessment that is required to have been carried out beforehand⁶.

The national authority to which notice is so given must: (a) consider whether the closure in question should be allowed⁷; and (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance⁸.

If the national authority is of the opinion that the closure should be allowed, it must: (i) carry out a consultation⁹ about the proposal¹⁰; and (ii) after carrying out that consultation, either notify the service operator that it has changed its opinion or refer the proposal (with or without modifications¹¹) to the Office of Rail Regulation¹².

The service operator must not discontinue the services in question before the Office of Rail Regulation has issued a closure ratification notice¹³.

1 For these purposes, 'excluded service' means a railway passenger service other than one which is: (1) a relevant railway passenger service for the purposes of any of the Railways Act 2005 s 22(1) (see PARA 145 note 1 ante), s 23(1) (see PARA 146 note 1 ante) and s 24(1) (see PARA 147 note 1 ante); or (2) an experimental passenger service: s 25(7). For these purposes, apart from the reference in the definition of 'excluded service' to 'relevant railway passenger service', 'railway' has its wider meaning (as to which see PARA 82 note 2 ante): s 25(12). For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by s 58(2). For the meaning of 'experimental passenger service' see PARA 161 note 2 post.

2 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by *ibid* s 58(2).

3 *Ibid* s 25(1). The provisions of s 25(2)-(12) (see the text and notes 4-13 *infra*) apply only to so much of the proposal that is mentioned in the text as relates to special procedure excluded services which are not excluded London services: see s 25(1)(a). As to the procedure which applies to so much of the proposal as relates to special procedure excluded services which are excluded London services see s 25(1)(b); and Sch 8 paras 1-5.

For these purposes, 'special procedure excluded service' means an excluded service which is designated as a special procedure service for the purposes of s 25 by an order made by the national authority, or is of a description of services so designated, where the 'national authority' is, for these purposes, the Secretary of State: see s 25(7). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. In the case of a proposal relating to one or more services, each of which is either a Scotland-only service or a cross-border service in relation to which no funding is provided by a railway funding authority other than the Scottish Ministers, 'national authority' means those Ministers: see the Railways Act 2005 s 25(7). For the meaning of 'cross-border service' see PARA 130 note 4 ante; definition applied by s 58(2). For the meaning of 'railway funding authority' see PARA 146 note 4 ante; and for the meaning of 'Scotland-only service' see PARA 145 note 5 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

For these purposes, 'excluded London service' means an excluded service which: (1) is provided by Transport for London or a subsidiary of Transport for London; or (2) is designated as a London service for the purposes of s 25 by an order made by the Secretary of State, or is of a description of services so designated: s 25(7). A service may be designated by order made by the Secretary of State as a London service for the purposes of s 25, or may fall within a description of services so designated, only if it is a service that begins and ends in Greater London and does not otherwise make any scheduled call outside Greater London: s 25(8). For the meaning of 'scheduled call' see PARA 85 note 14 ante; definition applied by s 58(2). For the meaning of

'subsidiary' see PARA 7 note 4 ante; definition applied by s 58(2). As to the establishment and purposes of Transport for London see PARAS 66, 67 ante. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

An order under s 25 designating an excluded service, or a description of excluded service: (a) as a London service (s 25(9)(a)); or (b) as a special procedure service (s 25(9)(b)), is subject to the negative resolution procedure (s 25(9)). At the date at which this volume states the law, no orders had been made under s 25. As to transitional provisions regarding orders under the Railways Act 1993 s 49, Sch 5 (repealed) see the Railways Act 2005 s 25(10), (11).

4 For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by ibid s 58(2).

5 Ibid s 25(2)(a). The particulars set out in the notice to a national authority under s 25(2)(a) must include, in particular: (1) the services to which the proposal relates (s 25(3)(a)); and (2) the proposal date (s 25(3)(b)). For these purposes, the proposal date must be a date not less than three months after the date of the notice: s 25(3). For the meaning of 'proposal date' see PARA 145 note 6 ante.

6 Ibid s 25(2)(b). The text refers to a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 25(4): see s 25(2)(b). Accordingly, before giving the notice under s 25(2), the service operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 25(4). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante.

7 Ibid s 25(5)(a).

8 Ibid s 25(5)(b).

9 Ie under ibid Sch 7 (as to which see PARA 155 post): see s 25(6)(a).

10 Ibid s 25(6)(a).

11 As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by ibid s 58(2).

12 Ibid s 25(6)(b). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

13 Ibid s 25(6). For the meaning of 'closure ratification notice' see PARA 157 post.

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B. DISCONTINUANCE OF OPERATION OF PASSENGER NETWORKS

149. Proposal by operator to close passenger network.

In circumstances where:

- 531 (1) the operator¹ of a network² proposes to discontinue the operation of the network or of some part of it³;
- 532 (2) the network (or, as the case may be, that part of it) has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway⁴;
- 533 (3) the network (or that part of it) is not secured⁵;
- 534 (4) the network (or that part of it) is not excluded by an order from the application of those closure provisions which relate to proposals by an operator to close a passenger network⁶; and
- 535 (5) the proposal is not a proposal for a minor modification⁷,

the operator must give notice to the national authority⁸ setting out particulars of the proposal for the closure⁹ in question¹⁰; and a summary of the results of the assessment that is required to have been carried out beforehand¹¹. The national authority to which notice is so given must: (a) consider whether the closure in question should be allowed¹²; and (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance¹³.

If the national authority forms the opinion that the closure should be allowed, it must: (i) carry out a consultation¹⁴ about the proposal¹⁵; and (ii) after carrying out that consultation, either notify the operator that it has changed its opinion or refer the proposal (with or without modifications) to the Office of Rail Regulation¹⁶.

If the national authority forms the opinion under head (b) above that the closure should not be allowed¹⁷, or if the national authority changes its opinion following the consultation under head (i) above¹⁸, or if, on a reference to the Office of Rail Regulation under head (ii) above, that Office issues a closure non-ratification notice¹⁹, the national authority must secure the continued operation of the network (or part of a network) in question after the end of the interim period²⁰.

The operator must not discontinue the operation of the network (or part of a network) in question before the end of the interim period²¹.

1 For the meaning of 'operator' see PARA 83 note 7 ante; definition applied by the Railways Act 2005 s 58(2).

2 For the meaning of 'network' see PARA 82 note 8 ante; definition applied by *ibid* s 58(2).

3 *Ibid* s 26(1)(a).

4 *Ibid* s 26(1)(b). For the meaning of 'railway' see PARA 82 note 2 ante; definition applied by s 58(2).

Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of s 26(1)(b): (1) an experimental passenger service (s 26(2)(a)); (2) a service involving travel through the

Channel Tunnel (s 26(2)(b)); (3) a service that is provided otherwise than as a regular scheduled service (s 26(2)(c)). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. As to the Channel Tunnel see PARA 324 post.

5 Ibid s 26(1)(c).

For the purposes of Pt 4 (ss 22-45), 'secured', in relation to a network or station, or a part of a network or station, means provided on behalf of the Secretary of State (or the Scottish Ministers) under: (1) s 26(9) (see the text and notes 17-20 infra), s 27(7) (proposal by funding authority to close passenger network: see PARA 150 post) or s 28(6), (7) (proposal to discontinue operation of secured network: see PARA 151 post); (2) s 29(9) (proposal by operator to close station: see PARA 152 post), s 30(7) (proposal by funding authority to close station: see PARA 153 post) or s 31(6), (7) (proposal to discontinue operation of secured station: see PARA 154 post); or (3) a requirement imposed under s 33(2) (closure ratification notice issued by the Office of Rail Regulation: see PARA 158 post): s 45(1). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

6 Railways Act 2005 s 26(1)(d). The text refers to a network (or that part of it) that is not excluded from the application of s 26 by an order under s 38 (as to which see PARA 163 post): see s 26(1)(d).

7 Ibid s 26(1)(e). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

8 Ie, for these purposes, the Secretary of State: see ibid s 26(10). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). In the case of a proposal relating to a network or part of a network that is wholly in Scotland, 'national authority' means the Scottish Ministers: see s 26(10). A proposal that relates to a network or part of a network that is partly in England and Wales and partly in Scotland is to be treated for the purposes of s 26 as two separate proposals, one in relation to the part in England and Wales and one in relation to the part in Scotland: see s 26(10). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

9 For the meaning of 'closure' see PARA 145 note 7 ante.

10 Railways Act 2005 s 26(3)(a). The particulars set out in the notice to a national authority under s 26(3)(a) must include, in particular: (1) the network (or part of a network) to which the proposal relates (s 26(4)(a)); and (2) the proposal date (s 26(4)(b)). For these purposes, the proposal date must be a date not less than three months after the date of the notice: s 26(4). For the meaning of 'proposal date' see PARA 145 note 6 ante.

11 Ibid s 26(3)(b). The text refers to a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 26(5): see s 26(3)(b). Accordingly, before giving the notice under s 26(3), the operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 26(5). For the meanings of 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante.

Notwithstanding these provisions, the Network Code Part G deals with the procedures which Network Rail and train operators must go through when certain types of change to the network ('network change') occur or are proposed: see eg *Network Rail Infrastructure Limited v Great North Eastern Railway Limited* [2003] RR 2 (21 Jun 2004) (interpretation and application of the Network Code Part G), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). As to the Network Code see PARA 102 note 44 ante.

12 Railways Act 2005 s 26(6)(a).

13 Ibid s 26(6)(b).

14 Ie under ibid Sch 7 (as to which see PARA 155 post): see s 26(7)(a).

15 Ibid s 26(7)(a).

16 Ibid s 26(7)(b). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

17 Railways Act 2005 s 26(9)(a).

18 Ibid s 26(9)(b).

19 Ibid s 26(9)(c). For the meaning of 'closure non-ratification notice' see PARA 157 post.

20 Ibid s 26(9). For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders) (see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a network or part of a network does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

21 Ibid s 26(8).

As to enforcement provisions in relation to the duty under s 26(8) see PARA 179 et seq post. Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders) (see PARA 182 post), any obligation of a person under s 26(8) not to discontinue the operation of a network or part of a network does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: Railways Act 2005 s 44(1), (2)(b).

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150. Proposal by funding authority to close passenger network.

In circumstances where:

- 536 (1) a railway funding authority¹ duly makes a proposal² that the operation of a network or of some part of it should be discontinued³;
- 537 (2) the network (or, as the case may be, that part of it) has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway⁴;
- 538 (3) the network or that part of it is not secured⁵;
- 539 (4) the network (or that part of it) is not excluded by an order from the application of those closure provisions which relate to proposals by a railway funding authority to close a passenger network⁶; and
- 540 (5) the proposal is not a proposal for a minor modification⁷,

the railway funding authority making the proposal must: (a) give notice of its proposal to the national authority⁸, if it is not itself that authority⁹; (b) carry out a consultation¹⁰ about the proposal¹¹; and (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation¹².

If arrangements under or in accordance with which the network (or part of a network) is being operated do not require it to be operated until the end of the interim period¹³, the national authority must secure the operation of the network (or that part of it) until the end of that period¹⁴. However, if, on a reference under head (c) above, the Office of Rail Regulation issues a closure non-ratification notice¹⁵, the national authority must secure the continued operation of the network (or part of a network) in question after the end of the interim period¹⁶.

1 For the meaning of 'railway funding authority' see PARA 146 note 4 ante.

2 In accordance with the Railways Act 2005 s 41: see s 27(1)(a).

A railway funding authority may make a proposal for the discontinuance of the operation of a network (or part of a network) if, and only if, the requirements of s 41(3)-(5) are satisfied: s 41(1). As to the requirements and application of s 41(3)-(5) see PARA 146 note 3 ante. For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 58(2).

3 Ibid s 27(1)(a).

4 Ibid s 27(1)(b). For the meaning of 'railway' see PARA 82 note 2 ante; definition applied by s 58(2).

Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of s 27(1)(b): (1) an experimental passenger service (s 27(2)(a)); (2) a service involving travel through the Channel Tunnel (s 27(2)(b)); (3) a service that is provided otherwise than as a regular scheduled service (s 27(2)(c)). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. As to the Channel Tunnel see PARA 324 post.

5 Ibid s 27(1)(c). For the meaning of 'secured' for these purposes see PARA 149 note 5 ante.

6 Ibid s 27(1)(d). The text refers to a network (or that part of it) that is not excluded from the application of s 27 by an order under s 38 (as to which see PARA 163 post): see s 27(1)(d).

7 Ibid s 27(1)(e). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

8 Ie, for these purposes, the Secretary of State: see ibid s 27(8). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. In the case of a proposal relating to a network or part of a network that is wholly in Scotland, 'national authority' means the Scottish Ministers: see the Railways Act 2005 s 27(8). A proposal that relates to a network or part of a network that is partly in England and Wales and partly in Scotland is to be treated for the purposes of s 27 as two separate proposals, one in relation to the part in England and Wales and one in relation to the part in Scotland: see s 27(8). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

9 Ibid s 27(3)(a). A notice to the national authority under s 27(3)(a) must set out: (1) particulars of the proposal for the closure including, in particular, the network (or part of a network) to which the proposal relates (s 27(4)(a)(i)) and the proposal date (s 27(4)(a)(ii)); and (2) a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 27(5) (s 27(4)(b)). Accordingly, before giving the notice under s 27(3)(a), in a case where it is not itself the national authority or, in any other case, before carrying out the consultation under s 27(3)(b) (see head (b) in the text) the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 27(5). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante; and for the meaning of 'proposal date' see PARA 145 note 6 ante.

10 Ie under ibid Sch 7 (as to which see PARA 155 post): see s 27(3)(b).

11 Ibid s 27(3)(b). See note 9 supra.

12 Ibid s 27(3)(c). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

Notwithstanding these provisions, the Network Code Part G deals with the procedures which Network Rail and train operators must go through when certain types of change to the network ('network change') occur or are proposed: see eg *Network Rail Infrastructure Limited v Great North Eastern Railway Limited* [2003] RR 2 (21 Jun 2004) (interpretation and application of the Network Code Part G), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). As to the Network Code see PARA 102 note 44 ante.

13 For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

14 Railways Act 2005 s 27(6).

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders: see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a network or part of a network does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

15 For the meaning of 'closure non-ratification notice' see PARA 157 post.

16 Railways Act 2005 s 27(7). See note 14 supra.

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151. Proposal to discontinue operation of secured network.

In circumstances where:

- 541 (1) a railway funding authority¹ makes a proposal² that the operation of a secured network³ or of a secured part of a network should be discontinued⁴;
- 542 (2) the network (or, as the case may be, that part of it) has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway⁵;
- 543 (3) the network (or that part of it) is not excluded by an order from the application of those closure provisions which relate to proposals to discontinue the operation of a secured network⁶; and
- 544 (4) the proposal is not a proposal for a minor modification⁷,

the railway funding authority making the proposal must: (a) give notice of its proposal to the national authority⁸, if it is not itself that authority⁹; (b) carry out a consultation¹⁰ about the proposal¹¹; and (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation¹².

If arrangements under or in accordance with which the network (or part of a network) is being operated do not require it to be operated until the end of the interim period¹³, the national authority must secure the operation of the network (or that part of it) until the end of that period¹⁴. However, if, on a reference under head (c) above, the Office of Rail Regulation issues a closure non-ratification notice¹⁵, the national authority must secure the continued operation of the network (or part of a network) in question after the end of the interim period¹⁶.

1 For the meaning of 'railway funding authority' see PARA 146 note 4 ante.

2 In accordance with the Railways Act 2005 s 41: see s 28(1)(a).

A railway funding authority may make a proposal for the discontinuance of the operation of a network (or part of a network) if, and only if, the requirements of s 41(3)-(5) are satisfied: s 41(1). As to the requirements and application of s 41(3)-(5) see PARA 146 note 3 ante. For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 58(2).

3 For the meaning of 'secured' for these purposes see PARA 149 note 5 ante.

4 Railways Act 2005 s 28(1)(a).

5 Ibid s 28(1)(b). For the meaning of 'railway' see PARA 82 note 2 ante; definition applied by s 58(2).

Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of s 28(1)(b): (1) an experimental passenger service (s 28(2)(a)); (2) a service involving travel through the Channel Tunnel (s 28(2)(b)); (3) a service that is provided otherwise than as a regular scheduled service (s 28(2)(c)). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. As to the Channel Tunnel see PARA 324 post.

6 Ibid s 28(1)(c). The text refers to a network (or that part of it) that is not excluded from the application of s 28 by an order under s 38 (as to which see PARA 163 post): see s 28(1)(c).

7 Ibid s 28(1)(d). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

8 le, for these purposes, the Secretary of State: see *ibid* s 28(9). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

In the case of a proposal relating to a network or part of a network that is wholly in Scotland, 'national authority' means the Scottish Ministers: see the Railways Act 2005 s 28(9). A proposal that relates to a network or part of a network that is partly in England and Wales and partly in Scotland is to be treated for the purposes of s 28 as two separate proposals, one in relation to the part in England and Wales and one in relation to the part in Scotland: see s 28(9). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

9 *Ibid* s 28(3)(a). A notice to the national authority under s 28(3)(a) must set out:

- 120 (1) particulars of the proposal for the closure including, in particular, the network (or part of a network) to which the proposal relates (s 28(4)(a)(i)) and the proposal date (s 28(4)(a)(ii)); and
- 121 (2) a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 28(5) (s 28(4)(b)).

Accordingly, before giving the notice under s 28(3)(a), in a case where it is not itself the national authority or, in any other case, before carrying out the consultation under s 28(3)(b) (see head (b) in the text) the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 28(5).

For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante; and for the meaning of 'proposal date' see PARA 145 note 6 ante.

10 le under *ibid* Sch 7 (as to which see PARA 155 post): see s 28(3)(b).

11 *Ibid* s 28(3)(b). See note 9 *supra*.

12 *Ibid* s 28(3)(c). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 *et seq* ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

Notwithstanding these provisions, the Network Code Part G deals with the procedures which Network Rail and train operators must go through when certain types of change to the network ('network change') occur or are proposed: see eg *Network Rail Infrastructure Limited v Great North Eastern Railway Limited* [2003] RR 2 (21 Jun 2004) (interpretation and application of the Network Code Part G), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). As to the Network Code see PARA 102 note 44 ante.

13 For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

14 Railways Act 2005 s 28(6).

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders: see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a network or part of a network does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

15 For the meaning of 'closure non-ratification notice' see PARA 157 post.

16 Railways Act 2005 s 28(7). See note 14 *supra*.

The duty of the national authority under s 28(7) is discharged without its taking further steps so long as the provisions of the arrangements, in force at the time of the proposal, so far as they require the operation of the network (or part of a network) continue in force without modification: s 28(8).

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C. DISCONTINUANCE OF USE OR OPERATION OF STATIONS

152. Proposal by operator to close station.

In circumstances where:

- 545 (1) the operator¹ of a station² proposes to discontinue the use of a station or of some part of it³;
- 546 (2) the station (or, as the case may be, that part of it) has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway⁴;
- 547 (3) the station (or that part of it) is not secured⁵;
- 548 (4) the station (or that part of it) is not excluded by an order from the application of those closure provisions which relate to proposals by a station operator to close a station (or some part of it)⁶; and
- 549 (5) the proposal is not a proposal for a minor modification⁷,

the operator must give notice to the national authority⁸ setting out particulars of the proposal for the closure⁹ in question¹⁰ and a summary of the results of the assessment that is required to have been carried out beforehand¹¹. The national authority to which a notice is so given must: (a) consider whether the closure in question should be allowed¹²; and (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance¹³.

If the national authority forms the opinion that the closure should be allowed, it must: (i) carry out a consultation¹⁴ about the proposal¹⁵; and (ii) after carrying out that consultation, either notify the operator that it has changed its opinion or refer the proposal (with or without modifications) to the Office of Rail Regulation¹⁶.

If the national authority forms the opinion under head (b) above that the closure should not be allowed¹⁷, or if the national authority changes its opinion following the consultation under head (i) above¹⁸, or if, on a reference to the Office of Rail Regulation under head (ii) above¹⁹, that Office issues a closure non-ratification notice²⁰, the national authority must secure the continued operation of the station, or part of a station, in question after the end of the interim period²¹.

The operator must not discontinue the use of the station (or part of a station) before the end of the interim period²².

1 For the meaning of 'operator' see PARA 83 note 7 ante; definition applied by the Railways Act 2005 s 58(2).

2 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by *ibid* s 58(2).

3 *Ibid* s 29(1)(a).

4 *Ibid* s 29(1)(b). For the meaning of 'railway' see PARA 82 note 2 ante; definition applied by s 58(2).

Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of s 29(1)(b): (1) an experimental passenger service (s 29(2)(a)); (2) a service involving travel through the

Channel Tunnel (s 29(2)(b)); (3) a service that is provided otherwise than as a regular scheduled service (s 29(2)(c)). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. As to the Channel Tunnel see PARA 324 post.

5 Ibid s 29(1)(c). For the meaning of 'secured' for these purposes see PARA 149 note 5 ante.

6 Ibid s 29(1)(d). The text refers to a network (or that part of it) that is not excluded from the application of s 29 by an order under s 38 (as to which see PARA 163 post): see s 29(1)(d).

7 Ibid s 29(1)(e). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

8 Ie, in relation to a proposal regarding a station or part of a station that is wholly in England and Wales, the Secretary of State: see ibid s 29(10). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. In the case of a proposal relating to a station or part of a station that is wholly in Scotland, 'national authority' means the Scottish Ministers: see the Railways Act 2005 s 29(10). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

9 For the meaning of 'closure' see PARA 145 note 7 ante.

10 Railways Act 2005 s 29(3)(a). The particulars set out in the notice to a national authority under s 29(3)(a) must include, in particular: (1) the station (or part of a station) to which the proposal relates (s 29(4)(a)); and (2) the proposal date (s 29(4)(b)). For these purposes, the proposal date must be a date not less than three months after the date of the notice: s 29(4). For the meaning of 'proposal date' see PARA 145 note 6 ante.

11 Ibid s 29(3)(b). The text refers to a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 29(5): see s 29(3)(b). Accordingly, before giving the notice under s 29(3), the operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 29(5). For the meanings of 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante.

12 Ibid s 29(6)(a).

13 Ibid s 29(6)(b).

14 Ie under ibid Sch 7 (as to which see PARA 155 post): see s 29(7)(a).

15 Ibid s 29(7)(a).

16 Ibid s 29(7)(b). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

17 Railways Act 2005 s 29(9)(a).

18 Ibid s 29(9)(b).

19 Ibid s 29(9)(c).

20 For the meaning of 'closure non-ratification notice' see PARA 157 post.

21 Railways Act 2005 s 29(9). For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders: see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a network or part of a network does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

22 Ibid s 29(8).

As to enforcement provisions in relation to the duty under s 29(8) see PARA 179 et seq post. Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders) (see PARA 182 post), any obligation of a person under s 29(8) not to discontinue the use of a station or part of a station does not give

rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: Railways Act 2005 s 44(1), (2)(c).

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153. Proposal by funding authority to close station.

In circumstances where:

- 550 (1) a railway funding authority¹ makes a proposal² that the operation of a station or of some part of it should be discontinued³;
- 551 (2) the station (or, as the case may be, that part of it) has at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway⁴;
- 552 (3) the station (or that part of it) is not secured⁵;
- 553 (4) the station (or that part of it) is not excluded by an order from the application of those closure provisions which relate to proposals by a railway funding authority to close a station (or some part of it)⁶; and
- 554 (5) the proposal is not a proposal for a minor modification⁷,

the railway funding authority making the proposal must: (a) give notice of its proposal to the national authority⁸, if it is not itself that authority⁹; (b) carry out a consultation¹⁰ about the proposal¹¹; and (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation¹².

If arrangements under or in accordance with which the station or part of a station is being operated do not require it to be operated until the end of the interim period¹³, the national authority must secure the operation of the station (or that part of it) until the end of that period¹⁴. However, if, on a reference under head (c) above, the Office of Rail Regulation issues a closure non-ratification notice¹⁵, the national authority must secure the continued operation of the station (or part of a station) in question after the end of the interim period¹⁶.

1 For the meaning of 'railway funding authority' see PARA 146 note 4 ante.

2 In accordance with the Railways Act 2005 s 41: see s 30(1)(a).

A railway funding authority may make a proposal for the discontinuance of the operation of a station or part of a station if, and only if, the requirements of s 41(3)-(5) are satisfied: s 41(1). As to the requirements and application of s 41(3)-(5) see PARA 146 note 3 ante. For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2).

3 Ibid s 30(1)(a).

4 Ibid s 30(1)(b). For the meaning of 'railway' see PARA 82 note 2 ante; definition applied by s 58(2).

Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of s 30(1)(b): (1) an experimental passenger service (s 30(2)(a)); (2) a service involving travel through the Channel Tunnel (s 30(2)(b)); (3) a service that is provided otherwise than as a regular scheduled service (s 30(2)(c)). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. As to the Channel Tunnel see PARA 324 post.

5 Ibid s 30(1)(c). For the meaning of 'secured' for these purposes see PARA 149 note 5 ante.

6 Ibid s 30(1)(d). The text refers to a network (or that part of it) that is not excluded from the application of s 30 by an order under s 38 (as to which see PARA 163 post): see s 30(1)(d).

7 Ibid s 30(1)(e). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

8 Ie, for these purposes, the Secretary of State: see ibid s 30(8). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. In the case of a proposal relating to a station or part of a station that is wholly in Scotland, 'national authority' means the Scottish Ministers: see the Railways Act 2005 s 30(8). As to the Scottish Ministers generally see PARA 124 note 7 ante.

9 Ibid s 30(3)(a). A notice to the national authority under s 30(3)(a) must set out: (1) particulars of the proposal for the closure including, in particular, the station (or part of a station) to which the proposal relates (s 30(4)(a)(i)) and the proposal date (s 30(4)(a)(ii)); and (2) a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 30(5) (s 30(4)(b)). Accordingly, before giving the notice under s 30(3)(a), in a case where it is not itself the national authority or, in any other case, before carrying out the consultation under s 30(3)(b) (see head (b) in the text) the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 30(5). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante; and for the meaning of 'proposal date' see PARA 145 note 6 ante.

10 Ie under ibid Sch 7 (as to which see PARA 155 post): see s 30(3)(b).

11 Ibid s 30(3)(b). See note 9 supra.

12 Ibid s 30(3)(c). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

13 For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

14 Railways Act 2005 s 30(6).

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders: see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a network or part of a network does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

15 For the meaning of 'closure non-ratification notice' see PARA 157 post.

16 Railways Act 2005 s 30(7). See note 14 supra.

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154. Proposal to discontinue operation of secured station.

In circumstances where:

- 555 (1) a railway funding authority¹ makes a proposal² that the operation of a secured station³ or of a secured part of a station should be discontinued⁴;
- 556 (2) the station (or, as the case may be, that part of it) has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway⁵;
- 557 (3) the station (or that part of it) is not excluded by an order from the application of those closure provisions which relate to proposals to discontinue the operation of secured station (or some part thereof)⁶; and
- 558 (4) the proposal is not a proposal for a minor modification⁷,

the railway funding authority making the proposal must: (a) give notice of its proposal to the national authority⁸, if it is not itself that authority⁹; (b) carry out a consultation¹⁰ about the proposal¹¹; and (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation¹².

If arrangements under or in accordance with which the station (or part of a station) is being operated do not require it to be operated until the end of the interim period¹³, the national authority must secure the operation of the station (or that part of it) until the end of that period¹⁴. However, if, on a reference under head (c) above, the Office of Rail Regulation issues a closure non-ratification notice¹⁵, the national authority must secure the continued operation of the station (or part of a station) in question after the end of the interim period¹⁶.

1 For the meaning of 'railway funding authority' see PARA 146 note 4 ante.

2 In accordance with the Railways Act 2005 s 41: see s 31(1)(a).

A railway funding authority may make a proposal for the discontinuance of the operation of a station or part of a station if, and only if, the requirements of s 41(3)-(5) are satisfied: s 41(1). As to the requirements and application of s 41(3)-(5) see PARA 146 note 3 ante. For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2).

3 For the meaning of 'secured' for these purposes see PARA 149 note 5 ante.

4 Railways Act 2005 s 31(1)(a).

5 Ibid s 31(1)(b). For the meaning of 'railway' see PARA 82 note 2 ante; definition applied by s 58(2).

Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of s 31(1)(b): (1) an experimental passenger service (s 31(2)(a)); (2) a service involving travel through the Channel Tunnel (s 31(2)(b)); (3) a service that is provided otherwise than as a regular scheduled service (s 31(2)(c)). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. As to the Channel Tunnel see PARA 324 post.

6 Ibid s 31(1)(c). The text refers to a station (or that part of it) that is not excluded from the application of s 31 by an order under s 38 (as to which see PARA 163 post): see s 31(1)(c).

7 Ibid s 31(1)(d). For the meaning of 'proposal for a minor modification' see PARA 159 post. As to the meaning of 'modification' see PARA 33 note 46 ante; definition applied by s 58(2).

8 Ie, for these purposes, the Secretary of State: see *ibid* s 31(9). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. In the case of a proposal relating to a station or part of a station that is wholly in Scotland, 'national authority' means the Scottish Ministers: see the Railways Act 2005 s 31(9). As to the Scottish Ministers generally see PARA 124 note 7 ante.

9 *Ibid* s 31(3)(a). A notice to the national authority under s 31(3)(a) must set out: (1) particulars of the proposal for the closure including, in particular, the station (or part of a station) to which the proposal relates (s 31(4)(a)(i)) and the proposal date (s 31(4)(a)(ii)); and (2) a summary of the results of the assessment that is required to have been carried out beforehand in accordance with s 31(5) (s 31(4)(b)). Accordingly, before giving the notice under s 31(3)(a), in a case where it is not itself the national authority or, in any other case, before carrying out the consultation under s 31(3)(b) (see head (b) in the text) the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance: s 31(5). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante; and for the meaning of 'proposal date' see PARA 145 note 6 ante.

10 Ie under *ibid* Sch 7 (as to which see PARA 155 post): see s 31(3)(b).

11 *Ibid* s 31(3)(b). See note 9 supra.

12 *Ibid* s 31(3)(c). As to referrals to the Office of Rail Regulation see PARA 157 post. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

13 For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

14 Railways Act 2005 s 31(6).

Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders: see PARA 182 post), any obligation of the Secretary of State (or the Scottish Ministers) under the Railways Act 2005 Pt 4 to secure the provision of a network or part of a network does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: s 44(1), (2)(g).

15 For the meaning of 'closure non-ratification notice' see PARA 157 post.

16 Railways Act 2005 s 31(7). See note 14 supra.

The duty of the national authority under s 31(7) is discharged without its taking further steps so long as the provisions of the arrangements, in force at the time of the proposal, so far as they require the operation of the station (or part of a station) continue in force without modification: s 31(8).

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D. CONSULTATIONS AND GUIDANCE

155. Consultations about proposals affecting networks, services or stations.

A consultation¹ about a proposal² must be initiated according to the statutory procedure³ and thereafter must be carried out in accordance with the closures guidance⁴.

The person carrying out the consultation must publish a notice⁵, in two successive weeks, both in a local newspaper circulating in the area affected by the proposal⁶ and in two national newspapers⁷. The notice must set out:

- 559 (1) the proposal date⁸;
- 560 (2) the other particulars of the proposal⁹;
- 561 (3) the address at which the initial assessment¹⁰, and a summary of the results of that assessment¹¹, are available for inspection (or from which a copy of that assessment and summary may be obtained)¹²;
- 562 (4) the fees payable for a copy of the assessment and summary¹³;
- 563 (5) a statement that any representations about the proposal may be sent to the person carrying out the consultation within such period as may be specified in the notice¹⁴.

The person carrying out the consultation must send to every person specified in heads (a) to (k) below (apart from himself) both a copy of every notice so published¹⁵ and a summary of the results of the initial assessment¹⁶; and he must, in such manner as he considers appropriate, consult such other persons (if any) as he thinks fit¹⁷. The persons specified for these purposes are:

- 564 (a) according to the nature of the proposal, either the person making the proposal in question¹⁸ or the national authority¹⁹;
- 565 (b) if the proposal affects Wales, the Welsh Ministers²⁰;
- 566 (c) if the proposal affects Greater London²¹, the Mayor of London²²;
- 567 (d) every Passenger Transport Executive whose area is affected by the proposal²³;
- 568 (e) every local authority²⁴ in whose area there are persons living, working or studying who appear (to the person carrying out the consultation) to be persons affected by the proposal²⁵;
- 569 (f) the Rail Passengers' Council²⁶;
- 570 (g) if the proposal affects its area, the London Transport Users' Committee²⁷;
- 571 (h) every person designated by order made by the Secretary of State for these purposes²⁸ as a body representing interests of railway passengers²⁹;
- 572 (i) every railway funding authority³⁰ appearing to the person carrying out the consultation to be a party to financial arrangements that are or may be affected by the proposal³¹;
- 573 (j) every person providing railway services³² who appears to the person carrying out the consultation to be affected by the proposal³³;
- 574 (k) every person providing station services³⁴ in relation to a station affected by the proposal³⁵.

The person carrying out the consultation must require every operator ³⁶of a station in the area affected by the proposal to whom he sends a copy of a notice³⁷ to secure that a copy of it is published by being displayed at that station until the end of the interim period³⁸.

1 le a consultation under the Railways Act 2005 ss 22-31, Sch 7 (paras 1-6): see Sch 7 para 1.

2 le a proposal under ibid Pt 4 (ss 22-45): see PARA 145 et seq ante.

3 Ibid Sch 7 para 1(a). The text refers to the procedure contained in Sch 7 paras 2-7 (see the text and notes 5-38 infra): see Sch 7 para 1(a).

4 Ibid Sch 7 para 1(b). For the meaning of 'closures guidance' see PARA 145 note 7 ante.

5 le a notice under ibid Sch 7 para 2: see Sch 7 para 2(1). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2).

6 Ibid Sch 7 para 2(1)(a). For these purposes, 'area affected', in relation to a proposal, means: (1) in the case of a proposal for the discontinuance of railway passenger services on a particular line or from a particular station, the area in which the line or station is situated (Sch 7 para 5(a)); (2) in the case of a proposal relating to a network (or part of a network) the area in which the network (or part of a network) is situated (Sch 7 para 5(b)); (3) in the case of a proposal relating to a station (or part of a station) the area served by the station (or that part) (Sch 7 para 5(c)). For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 58(2). For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by s 58(2). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2). As to proposals for the discontinuance of railway passenger services on a particular line or from a particular station see PARA 145 et seq ante; as to proposals for the discontinuance of any network or part of a network see PARA 149 et seq ante; and as to proposals for the discontinuance of any station or part of a station see PARA 152 et seq ante.

7 Ibid Sch 7 para 2(1)(b). A newspaper is to be regarded as a national newspaper for the purposes of Sch 7 para 2(1)(b) as it applies in relation to a proposal if: (1) it is a newspaper circulating generally in the United Kingdom (Sch 7 para 6(1)(a)); or (2) the proposal relates to services operating on a network or station (or part of a network or station) that is entirely in England, entirely in Wales, or entirely in Scotland, and it is a newspaper circulating generally in England, Wales or (as the case may be) Scotland (Sch 7 para 6(1)(b)). For these purposes, a service operates entirely in England, entirely in Wales or entirely in Scotland if it begins and ends in, and does not make any other scheduled call outside, England, Wales or (as the case may be) Scotland: Sch 7 para 6(2). For the meaning of 'scheduled call' see PARA 85 note 14 ante; definition applied by s 58(2). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante; and for the meaning of 'United Kingdom' see PARA 31 note 2 ante.

8 Ibid Sch 7 para 2(2)(a). For the meaning of 'proposal date' see PARA 145 note 6 ante.

In the case of a consultation carried out about a proposal to which s 23 (see PARA 146 ante), s 24 (see PARA 147 ante), s 27 (see PARA 150 ante), s 28 (see PARA 151 ante), s 30 (see PARA 153 ante) or s 31 (see PARA 154 ante) applies, the proposal date must be not less than six months after the notice is last published in a local newspaper for the purposes of Sch 7 para 2(1) (see the text and notes 5-7 supra): Sch 7 para 2(3).

9 Ibid Sch 7 para 2(2)(b).

10 Ibid Sch 7 para 2(2)(c)(i). For these purposes, 'initial assessment' means the assessment relating to the proposal that has been carried out under s 22(5) (see PARA 145 ante), s 23(5) (see PARA 146 ante), s 24(6) (see PARA 147 ante), s 25(4) (see PARA 148 ante), s 26(5) (see PARA 149 ante), s 27(5) (see PARA 150 ante), s 28(5) (see PARA 151 ante), s 29(5) (see PARA 152 ante), s 30(5) (see PARA 153 ante) or s 31(5) (see PARA 154 ante): Sch 7 para 4.

11 Ibid Sch 7 para 2(2)(c)(ii).

12 Ibid Sch 7 para 2(2)(c).

13 Ibid Sch 7 para 2(2)(d).

14 Ibid Sch 7 para 2(2)(e). The period specified under Sch 7 para 2(2)(e) must be a period ending no less than 12 weeks after the notice is last published in a local newspaper for the purposes of Sch 7 para 2(1) (see the text and notes 5-7 supra): Sch 7 para 2(4).

15 le published under ibid Sch 7 para 2 (see the text and notes 5-14 supra): see Sch 7 para 3(1)(a).

16 Ibid Sch 7 para 3(1)(a).

17 Ibid Sch 7 para 3(1)(b).

18 Ibid Sch 7 para 3(2)(a). The person making the proposal in question is specified in the case of a consultation for the purposes of s 22(7)(a) (see PARA 145 ante), s 25(6)(a) (see PARA 148 ante), s 26(7)(a) (see PARA 149 ante) or s 29(7)(a) (see PARA 152 ante): see Sch 7 para 3(2)(a).

19 Ibid Sch 7 para 3(2)(b). The national authority is specified in the case of a consultation for the purposes of s 24(4)(b) (see PARA 147 ante), s 27(3)(b) (see PARA 150 ante), s 28(3)(b) (see PARA 151 ante), s 30(3)(b) (see PARA 153 ante) or s 31(3)(b) (see PARA 154 ante) for the purposes of the section in question: see Sch 7 para 3(2)(b).

20 Ibid Sch 7 para 3(2)(c). As to the Welsh Ministers see PARA 35 ante.

21 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

22 Railways Act 2005 Sch 7 para 3(2)(d). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

23 Ibid Sch 7 para 3(2)(e). As to the meaning of references to a Passenger Transport Executive and to a passenger transport area for these purposes see PARA 64 note 3 ante.

24 For these purposes, 'local authority', in relation to England and Wales, means a county council or county borough council, a community council or a council for a district in an area for which there is no county council: ibid Sch 7 para 3(6)(a). As to Scotland see Sch 7 para 3(6)(b). As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

25 Ibid Sch 7 para 3(2)(f).

26 Ibid Sch 7 para 3(2)(g). As to the Rail Passengers' Council see PARA 48 et seq ante.

27 Ibid Sch 7 para 3(2)(h). As to the London Transport Users' Committee see PARA 48 et seq ante.

28 Ie for the purposes of ibid Sch 7: see Sch 7 para 3(2)(i). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

29 Railways Act 2005 Sch 7 para 3(2)(i). An order under Sch 7 para 3(2)(i) is subject to the negative resolution procedure: Sch 7 para 3(4). At the date at which this volume states the law, no such order had been made.

30 For the meaning of 'railway funding authority' see PARA 146 note 4 ante.

31 Railways Act 2005 Sch 7 para 3(2)(j).

In the case of a consultation carried out for the purposes of s 25 (proposals to discontinue excluded services: see PARA 148 ante), Sch 7 para 3(2) has effect with the omission of Sch 7 para 3(2)(j): Sch 7 para 3(5).

32 For the meaning of 'railway services' see PARA 82 ante; definition applied by ibid s 58(2).

33 Ibid Sch 7 para 3(2)(k).

34 For the meaning of 'station services' see PARA 82 note 5 ante; definition applied by ibid s 58(2).

35 Ibid Sch 7 para 3(2)(l).

36 For the meaning of 'operator' see PARA 83 note 7 ante; definition applied by ibid s 58(2).

37 Ie a copy of a notice sent under ibid Sch 7 para 3(1) (see the text and notes 15-17 supra): see Sch 7 para 3(3).

38 Ibid Sch 7 para 3(3). For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

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156. Closures guidance.

It is the duty of the Secretary of State¹ to publish guidance for the purposes of the closures provisions² so far as they have effect in relation to proposals as respects which none of the provisions relating to the Scottish Ministers (or to those Ministers acting jointly)³, or to the Secretary of State acting jointly with the Welsh Ministers⁴, imposes any duty⁵. It is the duty of the Secretary of State acting jointly with the Welsh Ministers to publish guidance for the purposes of the closures provisions⁶ so far as they have effect in relation to: (1) proposals to discontinue any Welsh service or services⁷; (2) proposals to discontinue the operation of a network⁸ or part of a network that is wholly in Wales⁹; or (3) proposals to discontinue the use or operation of any station¹⁰ or part of a station that is wholly in Wales¹¹. Guidance so published¹² may include different provision for different descriptions of proposals and for different purposes¹³.

A person who is under a duty so to publish guidance¹⁴ may from time to time modify the guidance¹⁵ and may publish revised guidance¹⁶. However, before so publishing or modifying any guidance¹⁷, the person with the duty of publishing the guidance must consult: (a) such persons operating railway passenger services¹⁸, networks and stations that are affected by the proposed guidance¹⁹ as he thinks appropriate²⁰; and (b) such other persons as he thinks appropriate²¹.

The Secretary of State must lay before each House of Parliament a copy of any guidance or revised guidance, or modifications of guidance, which he publishes or makes (whether or not jointly with any other person)²². Any guidance or revised guidance so published²³ is to have effect, and any modifications of guidance so made²⁴, are to have effect in accordance with an order made by the Secretary of State²⁵ or made jointly by the Secretary of State and the Scottish Ministers²⁶; and such an order which relates to guidance or revised guidance published, or modifications of guidance made, by the Welsh Ministers jointly with the Secretary of State or the Scottish Ministers, or both of them, may be made only with the consent of the Welsh Ministers²⁷.

1 As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

2 I.e. for the purposes of the Railways Act 2005 Pt 4: see PARA 145 et seq ante.

3 As to the duty of the Scottish Ministers to publish guidance for these purposes see *ibid* s 42(1); and as to the duty of the Scottish Ministers acting jointly with the Secretary of State or with the Welsh Ministers, or with both of them, to publish guidance for these purposes see s 42(2). As to the Welsh Ministers see PARA 35 ante; and as to the Scottish Ministers generally see PARA 124 note 7 ante.

In relation to the proposals referred to in s 42(1) and s 42(2) see the Closures Guidance (Railway Services in Scotland and England) Order 2006, SI 2006/2837.

4 I.e. under the Railways Act 2005 s 42(3) (as to which see the text and notes 6-11 *infra*).

5 *Ibid* s 42(4).

In relation to the proposals referred to in s 42(3) and s 42(4) see the Closures Guidance (Railway Services in England and Wales) Order 2006, SI 2006/2836.

6 See note 2 *supra*; and as to the guidance so published see note 5 *supra*.

7 Railways Act 2005 s 42(3)(a). For the meaning of 'Welsh service' see PARA 40 note 2 ante.

8 For the meaning of 'network' see PARA 82 note 8 ante; definition applied by ibid s 58(2).

9 Ibid s 42(3)(b).

10 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by ibid s 58(2).

11 Ibid s 42(3)(c).

12 Ie published under ibid s 42: see s 42(5).

13 Ibid s 42(5).

14 Ie under ibid s 42: see s 42(6).

15 Ibid s 42(6)(a).

16 Ibid s 42(6)(b).

17 Ie under ibid s 42: see s 42(7).

18 For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by ibid s 58(2).

19 For these purposes, a railway passenger service, network or station is affected by proposed guidance if the proposed guidance would have effect in relation to a proposal relating to that service, network or station: ibid s 42(8).

20 Ibid s 42(7)(a).

21 Ibid s 42(7)(b).

22 Ibid s 43(1). The text refers to guidance or revised guidance, or modifications of guidance, which the Secretary of State publishes or makes (whether or not jointly with any other person) under s 42 (see the text and notes 1-21 supra): see s 43(1). As to the duty of the Scottish Ministers in relation to any guidance or revised guidance, or modifications of guidance, which they publish or make (whether or not jointly with any other person) under s 42 see s 43(2).

23 Ie published under ibid s 42 (see the text and notes 1-21 supra): see s 43(3).

24 Ie made under ibid s 42 (see the text and notes 1-21 supra): see s 43(3).

25 Ie if ibid s 43(1) (see the text and note 22 supra) applies in relation to the guidance or modifications: see s 43(3)(a).

26 Ibid s 43(3). The text refers to an order made jointly by the Secretary of State and the Scottish Ministers if both s 43(1) (see the text and note 22 supra) and s 43(2) (see note 22 supra) apply in relation to the guidance or modifications: see s 43(3). If s 43(2) only applies in relation to the guidance or modifications, the order is made by the Scottish Ministers only: see s 43(3).

An order under s 43(3) is subject to the negative resolution procedure: s 43(5). If a statutory instrument containing such an order is annulled: (1) the guidance or revised guidance (or modifications of guidance) to which it relates is (or are) treated as having been withdrawn (s 43(6)(a)); and (2) where revised guidance or modifications is or are so withdrawn, any guidance published under s 42 which had effect before the publication of the revised guidance or the making of the modifications is to continue to have effect (s 43(6)(b)). The withdrawal of guidance or revised guidance or modifications of guidance under s 43(6) does not affect anything done in consequence of the guidance before the withdrawal and does not preclude the publication of further guidance or revised guidance or the making of further modifications: s 43(7).

27 Ibid s 43(4).

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E. REFERENCE OF PROPOSAL TO THE OFFICE OF RAIL REGULATION

157. References to the Office of Rail Regulation.

The reference of a proposal to the Office of Rail Regulation¹ may be made only if the person making it considers that the proposal (or, as the case may be, the proposal as modified) satisfies the criteria set out in the relevant part of the closures guidance². The reference must set out particulars of the proposal including, in particular, the services or the network³ or station⁴ (or part of a network or station) to which the proposal relates⁵, and the proposal date⁶. The reference must be accompanied by:

- 575 (1) a report by the person making the reference on the outcome of the consultation carried out by that person⁷;
- 576 (2) a statement by that person as to whether the proposal that is referred is a modified proposal⁸;
- 577 (3) a statement, if it is a modified proposal, setting out what modifications have been made⁹; and
- 578 (4) a full assessment of whether the proposal, or (as the case may be) the proposal as modified, satisfies the criteria set out in the relevant part of the closures guidance¹⁰.

The duty of the Office of Rail Regulation on the reference is: (a) to consider whether the person making the reference properly carried out the consultation he was required to carry out in accordance with the closure provisions¹¹; and (b) unless it is satisfied both that there has been a failure or other defect in the carrying out of the consultation¹², and that the failure or defect makes it inappropriate for the Office to make the determination required¹³, to determine whether the proposal (or, as the case may be, the proposal as modified) satisfies the criteria set out in the relevant part of the closures guidance¹⁴. The person making the reference must provide the Office of Rail Regulation with all such information as it may require for the purpose of carrying out its functions in relation to references¹⁵.

If the Office of Rail Regulation is satisfied:

- 579 (i) that the proposal (or, as the case may be, the proposal as modified) fails to satisfy the criteria set out in the relevant part of the closures guidance¹⁶; or
- 580 (ii) that there has been a failure or other defect in the carrying out of the consultation that makes it inappropriate for that Office to make a determination of whether the proposal (or, as the case may be, the proposal as modified) satisfies those criteria¹⁷,

it must issue a notice to that effect (a 'closure non-ratification notice')¹⁸. However, if, on completing its functions under heads (a) and (b) above, the Office of Rail Regulation is not so satisfied, it must issue a notice to that effect (a 'closure ratification notice')¹⁹.

Where, on a reference, the Office of Rail Regulation issues a closure non-ratification notice or a closure ratification notice²⁰, it must give a copy of that notice to specified persons²¹; and require every operator²² of a station in the area affected by the proposal²³ (or, as the case may be, the

proposal as modified) to whom it gives a copy of the notice to secure that a copy of the notice is published by being displayed at that station until the end of the interim period²⁴. The issue of a closure ratification notice does not authorise anything which (but for that notice) would constitute a contravention of any franchise agreement²⁵ or other arrangements under or in accordance with which:

- 581 (A) any franchised service²⁶ or secured service²⁷ or other railway passenger service²⁸ is being provided or is being funded (whether in whole or in part)²⁹; or
- 582 (B) any network or station (or part of a network or station) is being operated or is being funded (whether in whole or in part)³⁰.

In the carrying out of any functions conferred on that Office of Rail Regulation under or in relation to any such agreement or arrangements that Office may have regard to the issue of the closure ratification notice but is not required to secure that the closure takes place³¹.

1 The Railways Act 2005 s 32 applies to a reference of a proposal to the Office of Rail Regulation under any provision of Pt 4 (ss 22-45) (as to which see PARA 145 et seq ante): s 32(1).

As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

2 Railways Act 2005 s 32(2). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante. As to the meaning of 'modified' see PARA 33 note 46 ante; definition applied by s 58(2).

3 For the meaning of 'network' see PARA 82 note 8 ante; definition applied by ibid s 58(2).

4 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by ibid s 58(2).

5 Ibid s 32(3)(a).

6 Ibid s 32(3)(b). For the meaning of 'proposal date' see PARA 145 note 6 ante.

7 Ibid s 32(4)(a).

8 Ibid s 32(4)(b).

9 Ibid s 32(4)(c).

10 Ibid s 32(4)(d).

11 Ibid s 32(5)(a). The text refers to the consultation required to be carried out in accordance with Pt 4 (as to which see PARA 145 et seq ante): see s 32(5)(a).

12 Ibid s 32(5)(b)(i).

13 Ibid s 32(5)(b)(ii). The text refers to the determination required by s 32(5): see s 32(5)(b)(ii).

14 Ibid s 32(5)(b).

15 Ibid s 32(6). The text refers to the functions of the Office of Rail Regulation under s 32: see s 32(6). As to the meaning of 'functions' see PARA 7 note 12 ante; definition applied by s 58(2). As to the meaning of 'information' see PARA 34 note 5 ante; definition applied by s 58(2).

16 Ibid s 32(7)(a).

17 Ibid s 32(7)(b).

18 Ibid s 32(7). Accordingly, 'closure non-ratification notice' is to be construed in accordance with s 32(7): s 45(1). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2).

19 Ibid s 32(8). Accordingly, 'closure ratification notice' is to be construed in accordance with s 32(8): s 45(1). As to the effect of the issue of a closure ratification notice see PARA 158 post.

20 As to the maintenance by the Office of Rail Regulation of a register of the provisions of every closure ratification notice or closure non-ratification notice issued by it see PARA 56 ante.

21 Railways Act 2005 s 32(9)(a). The persons to whom a copy of the closure ratification notice or closure non-ratification notice must be given under s 32(9) are: (1) the person who made the reference (s 32(10)(a)); (2) every person to whom a notice was required to be sent under ss 22-31, Sch 7 para 3 (as to which see PARA 155 ante) in the consultation relating to the proposal (s 32(10)(b)); (3) every person otherwise consulted under Sch 7 para 3 in that consultation (s 32(10)(c)); and (4) such other persons as the Office of Rail Regulation considers appropriate (s 32(10)(d)).

22 For the meaning of 'operator' see PARA 83 note 7 ante; definition applied by ibid s 58(2).

23 For these purposes, 'area affected', in relation to a proposal, means: (1) in the case of a proposal for the discontinuance of services on a particular line or from a particular station, the area in which the line or station is situated (ibid s 32(11)(a)); (2) in the case of a proposal relating to a network (or part of a network) the area in which the network (or part of a network) is situated (s 32(11)(b)); (3) in the case of a proposal relating to a station (or part of a station) the area served by the station, or that part (s 32(11)(c)).

24 Ibid s 32(9)(b). For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

25 For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by ibid s 58(2). As to the meaning of 'contravention' in relation to any condition see PARA 70 note 23 ante.

26 For the meaning of 'franchised service' see PARA 130 note 4 ante; definition applied by ibid s 58(2).

27 For the meaning of 'secured service' see PARA 145 note 1 ante.

28 For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by the Railways Act 2005 s 58(2).

29 Ibid s 32(12)(a).

30 Ibid s 32(12)(b).

31 Ibid s 32(12).

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158. Effect of issue of closure ratification notice.

The Office of Rail Regulation¹ may, when it issues the closure ratification notice², impose such requirements relevant to the proposal³ as it considers appropriate on such one or more of the following as it thinks fit, namely⁴:

- 583 (1) the Secretary of State⁵;
- 584 (2) the Scottish Ministers⁶;
- 585 (3) the Welsh Ministers⁷;
- 586 (4) a Passenger Transport Authority⁸;
- 587 (5) a Passenger Transport Executive⁹;
- 588 (6) the Mayor of London¹⁰;
- 589 (7) Transport for London¹¹;
- 590 (8) a person designated as a railway funding authority¹²;
- 591 (9) a relevant operator¹³.

A person on whom a requirement is so imposed must comply with it¹⁴.

The Office of Rail Regulation may from time to time vary or revoke a requirement so imposed¹⁵. However, before exercising its power to vary or revoke a requirement, the Office of Rail Regulation must consult such persons as it thinks appropriate¹⁶. Where the Office of Rail Regulation exercises its power to impose, vary or revoke a requirement, it must: (a) give notice of that requirement, variation or revocation to every person to whom a copy of the closure ratification notice relating to the reference was given¹⁷; and (b) require every operator of a station in the area affected by the requirement¹⁸, variation or revocation to whom it gives notice of the requirement, variation or revocation to secure that a copy of the notice is published by being displayed at that station¹⁹: (i) in the case of the imposition of a requirement, until the end of the interim period²⁰; (ii) in the case of the variation or revocation of a requirement, for such period as the Office of Rail Regulation may specify at the time of giving notice under head (a) above²¹.

1 As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

2 The provisions of the Railways Act 2005 s 33 apply where, following a reference under Pt 4 (ss 22-45) (as to which see PARA 157 ante), the Office of Rail Regulation issues a closure ratification notice: s 33(1). For the meaning of 'closure ratification notice' see PARA 157 ante. For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2).

3 For these purposes, a requirement is relevant to a proposal if it relates to any matter which fell to be taken into account in making an assessment whether the proposal or (as the case may be) the proposal as modified satisfied the criteria set out in the relevant part of the closures guidance: *ibid* s 33(3). For the meanings of 'closure', 'closures guidance' and 'the relevant part of the closures guidance' see PARA 145 note 7 ante. As to the meaning of 'modified' see PARA 33 note 46 ante; definition applied by s 58(2).

4 *Ibid* s 33(2).

As to the maintenance by the Office of Rail Regulation of a register of the provisions of every closure requirement imposed by it see PARA 56 ante.

5 Ibid s 33(2)(a). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

6 Railways Act 2005 s 33(2)(b). As to the Scottish Ministers see PARA 124 note 7 ante.

7 Ibid s 33(2)(c). As to the Welsh Ministers see PARA 35 ante.

8 Ibid s 33(2)(d). As to the meaning of references to a Passenger Transport Authority see PARA 64 note 3 ante.

9 Ibid s 33(2)(e). As to the meaning of references to a Passenger Transport Executive see PARA 64 note 3 ante.

10 Ibid s 33(2)(f). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

11 Ibid s 33(2)(g). As to the establishment and railway functions of Transport for London see PARAS 66, 67 ante.

12 Ibid s 33(2)(h). The text refers to a person designated as a railway funding authority by an order under s 45(4) (as to which see PARA 146 note 4 ante): see s 33(2)(h).

13 Ibid s 33(2)(i). For these purposes, 'relevant operator' means: (1) in the case of a proposal to which s 22 (see PARA 145 ante) or s 25 (see PARA 148 ante) applies, the service operator within the meaning of the provision in question; (2) in the case of a proposal to which s 26 (see PARA 149 ante) or s 29 (see PARA 152 ante) applies, the operator of the network or station (or part of a network or station) in question; and (3) in the case of a proposal to which s 37(2) (see PARA 162 post) applies, the person providing the experimental passenger service in question: s 33(4). For the meaning of 'experimental passenger service' see PARA 161 note 2 post. For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 58(2). For the meaning of 'operator' see PARA 83 note 7 ante; definition applied by s 58(2). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2).

14 Ibid s 33(5).

As to enforcement provisions in relation to the duty under s 33(2) see PARA 179 et seq post. Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders) (see PARA 182 post), any obligation of a person under s 33(2) to comply with a closure requirement does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: Railways Act 2005 s 44(1), (2)(d).

15 Ibid s 33(6).

16 Ibid s 33(7).

17 Ibid s 33(8)(a). The text refers to the copy of the closure ratification notice given under s 32(9) (see PARA 157 ante): see s 33(8)(a).

18 For these purposes, 'area affected', in relation to a requirement imposed under ibid s 33 in relation to a closure, means: (1) in the case of a closure consisting in the discontinuance of services on a particular line, or from a particular station, the area in which the line or station is situated (s 33(9)(a)); (2) in the case of a closure relating to a network (or part of a network) the area in which the network (or part of a network) is situated (s 33(9)(b)); (3) in the case of a closure relating to a station (or part of a station) the area served by the station (or that part) (s 33(9)(c)); and 'area affected', in relation to the variation or revocation of such a requirement, is to be construed accordingly (s 33(9)).

19 Ibid s 33(8)(b).

20 Ibid s 33(8)(b)(i). For the meanings of 'end of the interim period' and 'interim period' see PARA 145 note 16 ante.

21 Ibid s 33(8)(b)(ii).

UPDATE

158 Effect of issue of closure ratification notice

TEXT AND NOTES 1-13--Railways Act 2005 s 33(2)(da) added: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 119.

TEXT AND NOTE 8--Reference to a Passenger Transport Authority is now to an Integrated Transport Authority (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247) or a Passenger Transport Authority: Railways Act 2005 s 33(2)(d) (substituted by the Local Transport Act 2008 Sch 4 para 66(3)).

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F. EXCLUDED PROPOSALS

159. Proposals for a minor modification.

A proposal is a 'proposal for a minor modification' if: (1) it is a proposal for a closure¹ which has been determined² to be a minor modification³; or (2) it is a proposal for a closure of a description of closures in relation to which such a determination has been made⁴. For these purposes, it is the Secretary of State who may make a determination that a closure is a minor modification, or that closures of a particular description are minor modifications⁵.

Such a determination may be made⁶ only if the person making it considers, in the case of a determination relating to a particular closure, that the closure is eligible⁷ to be regarded as a minor modification⁸ or, in the case of a determination relating to a description of closures, that all the closures falling within that description are or will be so eligible⁹. A person who makes such a determination in relation to particular proposals for closure made by operators¹⁰ in relation to non-franchised services¹¹ or in relation to the operation of passenger networks¹² or stations¹³ may make it subject to conditions¹⁴. The person who makes such a determination in relation to a particular closure must notify the Office of Rail Regulation about that determination¹⁵.

A determination in relation to a description of closures may be revoked at any time by the person who made it¹⁶. A person who so makes or revokes a determination in relation to a description of closures must send a copy of the determination or revocation to the Office of Rail Regulation¹⁷, and publish it in such manner as he considers appropriate¹⁸. The revocation of such a determination does not affect any closure if its status has been relied on before the revocation as grounds for a failure to give a notice under the closure provisions¹⁹ or as grounds for the carrying out of any closure²⁰.

1 For the meaning of 'closure' see PARA 145 note 7 ante.

2 Ie determined under the Railways Act 2005 s 34(2)-(11) (see the text and notes 5-20 infra): see s 34(1)(a).

3 Ibid s 34(1)(a).

4 Ibid s 34(1)(b).

5 Ibid s 34(3). The Secretary of State may make a determination in any case other than one for which the Scottish Ministers may make a determination: see s 34(3). As to the power of the Scottish Ministers to make such a determination see s 34(2); and as to the Scottish Ministers generally see PARA 124 note 7 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. As to the duty of the national authority to maintain a register including the provisions of every determination made by him that a closure is a minor modification or that closures of a particular description are minor modifications see PARA 37 ante.

As to transitional provisions in relation to any general determinations, or conditions agreed in relation to certain determinations, made under the Railways Act 1993 see the Railways Act 2005 s 34(10), (11).

6 Ie under ibid s 34: see s 34(4).

7 Ie under ibid s 35 (see PARA 160 post): see s 34(4)(a).

8 Ibid s 34(4)(a).

9 Ibid s 34(4)(b).

10 For the meaning of 'operator' see PARA 83 note 7 ante; definition applied by ibid s 58(2).

11 Ie for the purposes of ibid s 22 (see PARA 145 ante): see s 34(5).

12 Ie for the purposes of ibid s 26 (see PARA 149 ante): see s 34(5). For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 58(2).

13 Ie for the purposes of ibid s 29 (see PARA 152 ante): see s 34(5). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2).

14 Ibid s 34(5). In such a case, the closure is not to be treated as a minor modification unless, as the case may be: (1) the person providing the service or services to be discontinued (s 34(5)(a)); or (2) the person operating or using the network or station (or the part of a network or station) in question (s 34(5)(b)), has agreed to comply with those conditions (s 34(5)).

As to enforcement provisions in relation to the duty under s 34(5) see PARA 179 et seq post. Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders) (see PARA 182 post), any obligation of a person under s 34(5) to comply with conditions to which he has agreed does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: Railways Act 2005 s 44(1), (2)(e).

15 Ibid s 34(6). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2).

As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

16 Railways Act 2005 s 34(7).

17 Ibid s 34(8)(a).

18 Ibid s 34(8)(b).

19 Ibid s 34(9)(a). The text refers to a failure to give notice under Pt 4 (as to which see PARA 157 ante): see s 34(9)(a).

20 Ibid s 34(9)(b).

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160. Closures eligible to be treated as minor modifications.

The discontinuance of a railway passenger service¹ is eligible to be treated as a minor modification² so far as the service is a service on a stretch of line along which there is no station³ (or no station in use) and the circumstances are such that⁴:

- 592 (1) trains⁵ that would otherwise use that stretch of line in travelling between two stations will instead pass along an alternative route⁶; and
- 593 (2) passengers travelling on such a train will not be required to make additional changes and will not incur significant increases of journey times⁷.

The discontinuance of the operation of a part of a network⁸ is eligible to be treated as a minor modification so far as that part of the network consists in a stretch of track⁹ along which there is no station (or no station in use) and the circumstances are such that¹⁰:

- 594 (a) trains that would otherwise use that stretch of line in travelling between two stations will instead pass along an alternative route¹¹; and
- 595 (b) passengers travelling on such a train will not be required to make additional changes and will not incur significant increases of journey times¹².

The discontinuance of the operation of a part of a network is eligible to be treated as a minor modification so far as that part of the network consists of a stretch of track which does no more than serve a station or light maintenance depot¹³ (or some part of it) and the circumstances are such that¹⁴:

- 596 (i) that part of the network is not necessary for the operation or use of a station, or part of a station, for the purposes of or in connection with the provision of railway passenger services¹⁵; or
- 597 (ii) the operation or use of such station or part of a station as is served by that part of the network is or has been the subject of a proposal which is a proposal for a minor modification¹⁶.

The discontinuance of the operation of a part of a network is eligible to be treated as a minor modification so far as that part of the network consists of installations associated with any such stretch of track as is mentioned above¹⁷ and so far as the circumstances are as so mentioned¹⁸.

The discontinuance of the operation or use of either a part of a network (other than track)¹⁹ or a part of a station²⁰ is eligible to be treated as a minor modification so far as the operation or use of that part of the network or that part of the station is not necessary for the operation or use of the network or station for or in connection with the provision of railway passenger services²¹.

Where it appears to the Secretary of State²² that closures²³ of any description not so specified²⁴ should, because of their temporary nature or limited effect on the provision of railway passenger services, be treated as minor modifications, the Secretary of State²⁵ may, by order, provide for closures of that description to be treated as eligible²⁶ to be treated as minor modifications²⁷.

- 1 For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by the Railways Act 2005 s 58(2).
- 2 For the meaning of 'proposal for a minor modification' see PARA 159 ante.
- 3 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by the Railways Act 2005 s 58(2).
- 4 Ibid s 35(1).
- 5 For the meaning of 'train' see PARA 82 note 2 ante; definition applied by ibid s 58(2).
- 6 Ibid s 35(1)(a).
- 7 Ibid s 35(1)(b).
- 8 For the meaning of 'network' see PARA 82 note 8 ante; definition applied by ibid s 58(2).
- 9 For the meaning of 'track' see PARA 82 note 8 ante; definition applied by ibid s 58(2).
- 10 Ibid s 35(2).
- 11 Ibid s 35(2)(a).
- 12 Ibid s 35(2)(b).
- 13 For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; definition applied by ibid s 58(2).
- 14 Ibid s 35(3).
- 15 Ibid s 35(3)(a).
- 16 Ibid s 35(3)(b).
- 17 Ibid s 35(4)(a). The text refers to any such stretch of track as is mentioned in s 35(2) (see the text and notes 8-12 supra) or s 35(3) (see the text and notes 13-16 supra): see s 35(4)(a).
- 18 Ibid s 35(4)(b). The text refers to the circumstances being as mentioned in s 35(2) (see the text and notes 8-12 supra) or s 35(3) (see the text and notes 13-16 supra): see s 35(4)(b).
- 19 Ibid s 35(5)(a).
- 20 Ibid s 35(5)(b).
- 21 Ibid s 35(5).
- 22 Ie or the Scottish Ministers: see ibid s 35(6). As to the circumstances when the Scottish Ministers may make an order under s 35(6) see s 35(7); and as to the Scottish Ministers generally see PARA 124 note 7 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.
- 23 For the meaning of 'closure' see PARA 145 note 7 ante.
- 24 Ie not specified in the Railways Act 2005 s 35: see s 35(6).
- 25 See note 22 supra.
- 26 Ie treated for the purposes of the Railways Act 2005 s 34 (see PARA 159 ante) to be eligible under s 35: see s 35(6).
- 27 Ibid s 35(6). An order under s 35(6) is subject to the negative resolution procedure: s 35(8). Such orders are local in nature and are not recorded in this work.

UPDATE

160 Closures eligible to be treated as minor modifications

NOTE 24--See Railway Closures (Minor Modifications) Order 2009, SI 2009/2973.

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161. Designation of experimental passenger services.

The power to designate a railway passenger service¹ as experimental² is exercisable by the Secretary of State³. The designation must be in relation to a line or station⁴ on or from which the service is to be provided⁵. A service may not be designated as experimental for a period exceeding five years⁶. However, where a service is designated as experimental for a period of less than five years, the designation may subsequently be extended (on one or more occasions) by the person who made it⁷, although the aggregate of the periods for which the service is designated as experimental must not exceed five years⁸.

The person who designates a service as experimental or extends such a designation must: (1) send a copy of the designation or extension to the Office of Rail Regulation⁹; and (2) publish notice of the designation or extension in two successive weeks¹⁰ both in a local newspaper circulating in the area affected by the designation or extension¹¹ and in two national newspapers¹².

Where a service is designated as experimental or its designation is extended¹³, and the service is to be provided otherwise than in satisfaction of requirements imposed by a franchise agreement¹⁴, the person designating must give notice of the designation or extension to the person who is to provide the service¹⁵.

1 For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by the Railways Act 2005 s 58(2).

2 For the purposes of *ibid* Pt 4 (ss 22-45) (as to which see PARA 145 ante): see s 36(1). For these purposes, 'experimental passenger service' means a railway passenger service which, before its introduction, was designated under s 36 as experimental: s 45(1).

3 *Ibid* s 36(1). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

The power referred to in the text does not fall to be exercised by the Secretary of State in the following cases: (1) if the service is a Scotland-only service, the power is exercisable by the Scottish Ministers; (2) if it is a cross-border service in respect of which more funding is provided by the Scottish Ministers than the Secretary of State, the power is exercisable by those Ministers; (3) if it is a Welsh service in respect of which more funding is provided by the Welsh Ministers than the Secretary of State, the power is exercisable by those Ministers: see the Railways Act 2005 s 36(1). For the meaning of 'cross-border service' see PARA 130 note 4 ante; definition applied by s 58(2). For the meaning of 'Scotland-only service' see PARA 145 note 5 ante; definition applied by s 58(2). For the meaning of 'Welsh service' see PARA 40 note 2 ante. As to the Welsh Ministers see PARA 35 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

As to transitional provisions in relation to any railway passenger service being treated as an experimental passenger service for the purposes of the Railways Act 1993 see the Railways Act 2005 s 36(10).

4 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by *ibid* s 58(2).

5 *Ibid* s 36(2).

6 *Ibid* s 36(3).

7 *Ibid* s 36(4)(a).

8 *Ibid* s 36(4)(b). In determining for the purposes of s 36 the period or aggregate period for which a service is designated as experimental, any period before the service is introduced is to be disregarded: s 36(5).

9 Ibid s 36(6)(a).

As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of every designation of a service as experimental see PARA 56 ante.

10 Railways Act 2005 s 36(6)(b). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2).

11 Ibid s 36(6)(b)(i). For these purposes, the area affected by a designation, or by the extension of a designation, is the area in which is situated the line or station in relation to which the designation is or was made: s 36(8).

12 Ibid s 36(6)(b)(ii). For the purposes of s 36(6)(b)(ii), as it applies in relation to a Scotland-only service or to a Wales-only service, a newspaper which circulates generally in Scotland or, as the case may be, Wales is to be regarded as being a national newspaper: s 36(9). For the meaning of 'Wales-only service' see PARA 40 note 6 ante.

13 Ibid s 36(7)(a).

14 Ibid s 36(7)(b). For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by s 58(2).

15 Ibid s 36(7).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(v) Closures/F. EXCLUDED PROPOSALS/162. Discontinuance of experimental passenger services.

162. Discontinuance of experimental passenger services.

In circumstances where:

- 598 (1) a railway funding authority¹ is a party to a franchise agreement² under which an experimental passenger service³ is provided⁴;
- 599 (2) the person providing the service proposes to discontinue it after the requirement to provide it has come to an end⁵; and
- 600 (3) that authority does not propose to secure the continued provision of the service⁶,

that authority must give notice of the proposed discontinuance of the service⁷. In circumstances where:

- 601 (a) an experimental passenger service is provided otherwise than in satisfaction of requirements imposed by a franchise agreement⁸; and
- 602 (b) the person providing the service proposes to discontinue it⁹,

that person must give notice of his proposal and must not discontinue the service before the end of the notice period¹⁰.

The notice that is required to be given in each of these sets of circumstances¹¹ is a notice which sets out the details of the proposed discontinuance¹² and is published in the required manner¹³. A notice is published in the required manner if it is published, in two successive weeks: (i) in a local newspaper circulating in the area affected by the proposal¹⁴; (ii) in two national newspapers¹⁵; and (iii) in such other manner as appears to the person giving the notice to be appropriate¹⁶.

1 For the meaning of 'railway funding authority' see PARA 146 note 4 ante.

2 For the meaning of 'franchise agreement' see PARA 130 note 4 ante; definition applied by the Railways Act 2005 s 58(2).

3 For the meaning of 'experimental passenger service' see PARA 161 note 2 ante.

4 Railways Act 2005 s 37(1)(a).

5 Ibid s 37(1)(b).

6 Ibid s 37(1)(c).

7 Ibid s 37(1). As to the notice to be given see the text and notes 11-16 infra. For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2).

8 Ibid s 37(2)(a).

9 Ibid s 37(2)(b).

10 Ibid s 37(2). For these purposes, 'notice period', in relation to a proposal to discontinue a service, means the period of six weeks after the notice of that proposal has been published in the required manner: s 37(6). As to the notice to be given see the text and notes 11-16 infra.

As to enforcement provisions in relation to the duty under s 37(2) see PARA 179 et seq post. Subject to the Railways Act 1993 s 57 (as amended) (validity and effect of final and provisional orders) (see PARA 182 post), any obligation of a person under s 37(2) not to discontinue an experimental passenger service does not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty: Railways Act 2005 s 44(1), (2)(f).

11 Ie under *ibid* s 37: see s 37(3).

12 *Ibid* s 37(3)(a).

13 *Ibid* s 37(3)(b).

A person giving notice of a proposed discontinuance under s 37(2) (see the text and notes 8-10 *supra*) must send to the Office of Rail Regulation a copy of the notice published under s 37(3)(b): s 37(5).

As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, ie the objectives at which it must aim when exercising, or deciding not to exercise, functions assigned or transferred to it under or by virtue of the Railways Act 2005, see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of every notice of a proposal to discontinue a service designated as experimental see PARA 56 ante.

14 Railways Act 2005 s 37(4)(a). For these purposes, the area affected by a proposal to discontinue a service designated as experimental is the area in which is situated the line or station in relation to which the service is designated as experimental: s 37(7). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2).

15 *Ibid* s 37(4)(b). For the purposes of s 37(4)(b), as it applies in relation to a Scotland-only service or to a Wales-only service, a newspaper which circulates generally in Scotland or, as the case may be, Wales is to be regarded as being a national newspaper: s 37(8). For the meaning of 'Scotland-only service' see PARA 145 note 5 ante; definition applied by s 58(2). For the meaning of 'Welsh service' see PARA 40 note 2 ante; and for the meaning of 'Wales-only service' see PARA 40 note 6 ante.

16 *Ibid* s 37(4)(c).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(v) Closures/F. EXCLUDED PROPOSALS/163. Services, networks and stations excluded by order of national authority.

163. Services, networks and stations excluded by order of national authority.

The national authority¹ may by order²: (1) exclude a railway passenger service (or all railway passenger services of a specified description) from the application of any one or more of the provisions regarding proposals for the discontinuance of railway passenger services³; (2) exclude a network or part of a network (or all networks or parts of them of a specified description) from the application of any one or more of the provisions regarding proposals for the discontinuance of the operation of passenger networks⁴; (3) exclude a station or part of a station (or all stations or parts of them of a specified description) from the application of any one or more of the provisions regarding proposals for the discontinuance of the use or operation of stations⁵.

1 I.e., for these purposes, the Secretary of State: see the Railways Act 2005 s 38(2). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante.

As respects a railway passenger service which is a Scotland-only service, or a cross-border service in relation to which so much of the funding as is provided by a railway funding authority is funding provided by the Scottish Ministers, or as respects a network or station (or part of a network or station) that is wholly in Scotland, 'national authority' means those Ministers: see the Railways Act 2005 s 38(2). For the meaning of 'railway funding authority' see PARA 146 note 4 ante. For the meaning of 'cross-border service' see PARA 130 note 4 ante; definition applied by s 58(2). For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 58(2). For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by s 58(2). For the meaning of 'Scotland-only service' see PARA 145 note 5 ante; definition applied by s 58(2). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 58(2). As to the Scottish Ministers generally see PARA 124 note 7 ante.

2 Ibid s 38(1). An order under s 38 is subject to the negative resolution procedure: s 38(3). At the date at which this volume states the law, no such orders had been made under s 38. As to transitional provisions in relation to any exclusion orders made for the purposes of the Railways Act 1993 see the Railways Act 2005 s 38(4).

3 Ibid s 38(1)(a). The text refers to exclusion from the provisions of ss 22-24 (see PARA 145 et seq ante): see s 38(1)(a).

4 Ibid s 38(1)(b). The text refers to exclusion from the provisions of ss 26-28 (see PARA 149 et seq ante): see s 38(1)(b).

5 Ibid s 38(1)(c). The text refers to exclusion from the provisions of ss 29-31 (see PARA 152 et seq ante): see s 38(1)(c).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(3) OPERATING THE RAILWAYS/(v) Closures/G. SUBSTITUTION SERVICES/164. Substitute road services for the carriage of rail passengers.

G. SUBSTITUTION SERVICES

164. Substitute road services for the carriage of rail passengers.

Where a railway passenger service¹ either is temporarily interrupted², or has been discontinued³, the appropriate national authority⁴ may secure the provision of a substitute service for the carriage of passengers by road by means of public service vehicles⁵ or private hire vehicles⁶. Where a railway passenger service has been temporarily interrupted, the route and stopping places⁷ of the substitute service need not correspond precisely to those of the interrupted service if it is not practicable for them to do so⁸; and, where a railway passenger service has been discontinued, the route and stopping places of the substitute service need not correspond precisely to those of the discontinued service if⁹: (1) it is not practicable for them to do so¹⁰; or (2) the substitute service broadly corresponds to the discontinued service in terms of the localities served¹¹.

Where a person who provides services for the carriage of passengers by railway¹² provides or secures the provision of substitute road services¹³, or where the provision of such services is secured¹⁴, then, in providing or securing the provision of the services, that person¹⁵ must ensure, so far as is reasonably practicable, that the substitute road services allow disabled passengers¹⁶ to undertake their journeys safely and in reasonable comfort¹⁷. In the event of any failure by a person to so comply, he is liable to pay damages in respect of any expenditure reasonably incurred, or other loss sustained, by a disabled passenger in consequence of the failure¹⁸.

1 For the meaning of 'railway passenger service' see PARA 36 note 2 ante; definition applied by the Railways Act 2005 s 58(2).

2 Ibid s 40(1)(a).

3 Ibid s 40(1)(b).

4 Ie, in a case where the railway passenger service that is interrupted or discontinued is a service beginning or ending in England or otherwise making at least one scheduled call in England, the Secretary of State; and in the case where that railway passenger service is a Wales-only service or is secured by the Welsh Ministers, those Ministers; and where in any case there is more than one appropriate national authority they each have the powers conferred by ibid s 40: s 40(4). In a case where the railway passenger service is a relevant Scottish passenger service (for the meaning of which see s 40(5)), the appropriate national authority is the Scottish Ministers: see s 40(4). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante; for the meaning of 'scheduled call' see PARA 85 note 14 ante; for the meaning of 'secured service' see PARA 145 note 1 ante; and for the meaning of 'Wales-only service' see PARA 40 note 6 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt 4 (ss 22-45), see the Railways Act 1993 s 4 (as amended); and PARA 33 ante. As to the Welsh Ministers see PARA 35 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

5 For these purposes, 'public service vehicles' has the meaning given by the Public Passenger Vehicles Act 1981 s 1 (as amended) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1136): see the Railways Act 2005 s 40(7).

6 Ibid s 40(1). For these purposes, 'private hire vehicles' means vehicles licensed under the Town Police Clauses Act 1847 s 37 (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1435), the Metropolitan Public Carriage Act 1869 s 6 (as substituted) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1479), the Local Government (Miscellaneous Provisions) Act 1976 s 48 (as amended) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1448) or

the Private Hire Vehicles (London) Act 1998 s 7 (as amended) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1500) or under any similar enactment: see the Railways Act 2005 s 40(6).

7 For these purposes, 'stopping place', in relation to a service, means a place at which a service makes a stop for the purposes of allowing passengers to join or leave the service: *ibid* s 40(7).

8 *Ibid* s 40(2).

9 *Ibid* s 40(3).

10 *Ibid* s 40(3)(a).

11 *Ibid* s 40(3)(b).

12 For the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 ante; definition applied by the Transport Act 2000 s 254.

13 *Ibid* s 248(1)(a). For these purposes, 'substitute road services' means services for the carriage of passengers by road which are provided where railway services have been temporarily interrupted or discontinued: s 248(7). For the meaning of 'railway services' see PARA 82 ante; definition applied by s 254.

14 *Ibid* s 248(1)(b) (substituted by the Railways Act 2005 s 59(1), Sch 12 para 17(1), (4)). The text refers to services secured by the Secretary of State or the Welsh Ministers or by the Scottish Ministers: see the Transport Act 2000 s 248(1)(b) (as substituted).

15 *Ie* the person providing the services or the Secretary of State or the Welsh Ministers or the Scottish Ministers: see *ibid* s 248(2) (as amended: see note 17 *infra*).

16 For these purposes, a passenger is disabled if he has a disability, or has suffered an injury, which seriously impairs his ability to walk: *ibid* s 248(8).

17 *Ibid* s 248(2) (amended by the Railways Act 2005 Sch 12 para 17(1), (5)).

The Secretary of State may by order grant exemption from the Transport Act 2000 s 248(2) (as amended) to any class or description of persons who provide services for the carriage of passengers by railway, or to any particular person who provides such services, in respect of all substitute road services or any class or description of such services: s 248(4). Such an order must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 248(6). Before making such an order, the Secretary of State must consult the Disabled Persons Transport Advisory Committee, and such other representative organisations as he thinks fit: s 248(5). The Disabled Persons Transport Advisory Committee is the committee established under the Transport Act 1985 s 125 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 259). The Secretary of State, in exercise of the powers conferred upon him by the Transport Act 2000 s 248(4), has made the Railways (Substitute Road Services) (Exemptions) Order 2006, SI 2006/1935.

18 Transport Act 2000 s 248(3) (amended by the Railways Act 2005 s 59(6), Sch 12 para 17(1), (6)(a), (b), Sch 13 Pt 1).

UPDATE

164 Substitute road services for the carriage of rail passengers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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(vi) Regulation of Railway Operations

A. DIRECTION TO PROVIDE, IMPROVE OR DEVELOP RAILWAY FACILITIES

165. Direction to provide, improve or develop railway facilities.

The Office of Rail Regulation¹ may, on an application² made either by the appropriate facilities authority³ or by any other person with the consent of the appropriate facilities authority⁴, give to the operator⁵ of a network⁶, station⁷ or light maintenance depot⁸, a direction⁹ to provide a new railway facility¹⁰, if the Office of Rail Regulation considers him to be an appropriate person to provide the new railway facility¹¹. The Office of Rail Regulation may, on an application¹² made either by the appropriate facilities authority¹³ or by any other person with the consent of the appropriate facilities authority¹⁴, give to a person who has an estate or interest in, or right over, an existing railway facility a direction to improve or develop the railway facility, if the Office of Rail Regulation considers him to be an appropriate person to improve or develop the railway facility¹⁵.

However, the appropriate facilities authority may, after consultation with the Office of Rail Regulation, by order grant exemption from the provisions which relate to the provision, improvement and development of railway facilities¹⁶ in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified¹⁷. Such an exemption may be granted in respect of either railway facilities of a particular class or description¹⁸, or a particular railway facility¹⁹, or in respect of part only of railway facilities of a particular class or description or a particular railway facility²⁰; and such an exemption may be granted generally, to persons of a particular class or description or to a particular person²¹. Exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases²².

If a person fails to comply with any condition subject to compliance with which an exemption was granted, the appropriate facilities authority may give a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction²³. Subject to this provision²⁴, an exemption, unless previously revoked in accordance with any term contained in the exemption, will continue in force for such period as may be specified in, or determined by or under, the exemption²⁵.

1 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. The Office of Rail Regulation must prepare, publish, and from time to time revise, a code of practice supplementing ss 16A-16G (as added and amended): see PARA 170 post.

2 Ibid s 16A(1) (ss 16A-16B, 16I added by the Transport Act 2000 s 223; the Railways Act 1993 s 16A(1) amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)).

3 Railways Act 1993 s 16A(1)(a) (s 16A as added (see note 2 supra); s 16A(1)(a), (b) amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 11(1)). For these purposes, 'appropriate facilities authority', in relation to any facilities other than facilities in Scotland, means the Secretary of State: Railways Act 1993 s 16A(3A) (s 16A as added (see note 2 supra); s 16A(3A) added by Railways Act 2005 Sch 1 para 11(3)). As to the Secretary

of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

4 Ibid s 16A(1)(b) (s 16A as added (see note 2 supra); s 16A(1)(b) as amended (see note 3 supra)). The consent of the appropriate facilities authority to the making by any other person of an application under either the Railways Act 1993 s 16A(1) (as added and amended) or s 16A(2) (as added and amended) (see the text and notes 12-15 infra) may be given subject to compliance with conditions (and may be withdrawn if any condition is not complied with before the Office of Rail Regulation decides whether to give the direction): s 16A(3) (as so added; amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 11(2)). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

5 For the meaning of 'operator' see PARA 83 note 7 ante.

6 For the meaning of 'network' see PARA 82 note 8 ante.

7 For the meaning of 'station' see PARA 82 note 5 ante.

8 For the meaning of 'light maintenance depot' see PARA 83 note 7 ante.

9 As to the making of applications for such a direction see PARA 166 et seq post; and as to the making of directions under the Railways Act 1993 generally see PARA 29 note 13 ante.

10 For these purposes, references to a railway facility include part of a railway facility: Railways Act 1993 s 16I(1) (as added: see note 2 supra). For the meaning of 'railway facility' generally see PARA 102 note 1 ante.

11 Ibid s 16A(1) (as added and amended: see note 2 supra).

Nothing in any of ss 16A-16H (as added and amended) or a direction under s 16A (as added and amended) limits any power of the Office of Rail Regulation under any other provision of the Railways Act 1993 or affects any obligation to provide a new railway facility, or to improve or develop an existing railway facility, arising otherwise than from such a direction: s 16I(2) (s 16I as added (see note 2 supra); s 16I(2) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Notwithstanding the Railways Act 1993 s 16I (as added and amended), the Network Code Part G deals with the procedures which Network Rail and train operators must go through when certain types of change to the network ('network change') occur or are proposed: see eg *Network Rail Infrastructure Limited v Great North Eastern Railway Limited* [2003] RR 2 (21 Jun 2004) (interpretation and application of the Network Code Part G), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). As to the Network Code see PARA 102 note 44 ante.

12 Railways Act 1993 s 16A(2) (s 16A as added (see note 2 supra); s 16A(2) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

13 Railways Act 1993 s 16A(2)(a) (s 16A as added (see note 2 supra); s 16A(2)(a), (b) amended by the Railways Act 2005 Sch 1 Pt 1 para 11(1)).

14 Railways Act 1993 s 16A(2)(b) (s 16A as added (see note 2 supra); s 16A(2)(b) as amended (see note 13 supra)). As to consent see note 4 supra.

15 Railways Act 1993 s 16A(2) (as added and amended: see note 12 supra).

16 Ie an exemption from ibid s 16A(1) (as added and amended) (see the text and notes 1-11 supra) or s 16A(2) (as added and amended) (see the text and notes 12-15 supra), or from both of those provisions: see s 16B(1) (as added and amended: see note 17 infra).

17 Ibid s 16B(1) (s 16B as added (see note 2 supra); s 16B(1) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 para 11(4)).

18 Railways Act 1993 s 16B(2)(a) (as added: see note 2 supra). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

19 Ibid s 16B(2)(b) (as added: see note 2 supra).

20 Ibid s 16B(2) (as added: see note 2 supra).

21 Ibid s 16B(3) (as added: see note 2 supra).

22 Ibid s 16B(6) (as added: see note 2 supra).

In exercise of the powers conferred by s 16B (as added and amended), the Secretary of State has made the Railways (Provision etc of Railway Facilities) (Exemptions) Order 2005, SI 2005/2628. Exemption is granted from the Railways Act 1993 s 16A(1) (as added and amended) (see the text and notes 1-11 supra) to every operator of a network, station or light maintenance depot in respect of any railway facility, except the persons ('non-exempt operators') specified in the Railways (Provision etc of Railway Facilities) (Exemptions) Order 2005, SI 2005/2628, art 2(2), Sch 1: see art 2(1), (2). Exemption is granted from the Railways Act 1993 s 16A(2) (as added and amended) (see the text and notes 12-15 supra) in respect of the railway facilities specified in the Railways (Provision etc of Railway Facilities) (Exemptions) Order 2005, SI 2005/2628, art 3, Sch 2 ('exempted facilities') to any person having an estate or interest in, or a right over, any of those facilities: see art 3. The Secretary of State may revoke an exemption granted by the Railways (Provision etc of Railway Facilities) (Exemptions) Order 2005, SI 2005/2628 in respect of any operator or railway facility to whom or to which the exemption applies: art 4(1). However, before exercising the power to revoke such exemptions, the Secretary of State must: (1) serve notice in writing on the operator (or on the person who has an estate or interest in, or right over, the railway facility in question, as the case may be) informing him of his intention to revoke the exemption in respect of that operator or railway facility, and inviting him to make representations in writing to the Secretary of State within such period, not being less than 28 days from the service of the notice, as may be specified in the notice (art 4(2)(a)); and (2) consider any representations so made (art 4(2)(b)).

23 Railways Act 1993 s 16B(4) (as added (see note 2 supra); amended by the Railways Act 2005 Sch 1 para 11(4)).

24 le subject to the Railways Act 1993 s 16B(4) (as added and amended): see s 16B(5) (as added).

25 Ibid s 16B(5) (as added: see note 2 supra).

UPDATE

165 Direction to provide, improve or develop railway facilities

NOTE 22--SI 2005/2628 Sch 2 amended: SI 2009/3336.

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166. Application for direction to provide, improve or develop railway facilities.

An application for a direction to provide, improve or develop a railway facility¹ must be made to the Office of Rail Regulation² in writing³. The application must:

- 603 (1) specify the person to whom the direction would be given⁴;
- 604 (2) state what it would require him to do⁵; and
- 605 (3) give the applicant's reasons for considering that person to be an appropriate person to do what the direction would require him to do⁶.

The applicant may at any time vary what the direction would require that person to do by giving to the Office of Rail Regulation notice⁷ in writing of the variation; but if the applicant is a person other than the appropriate facilities authority⁸ such a notice may only be given with the consent⁹ of the appropriate facilities authority¹⁰. The application or notice of a variation may be accompanied by any written representations which the applicant wishes to make in relation to the direction¹¹.

When the Office of Rail Regulation has received the application or notice of a variation, it must¹²:

- 606 (a) send a copy to the person specified in the application, the appropriate facilities authority (if it is not the applicant) and any other persons who the Office of Rail Regulation considers ought to be sent one¹³; and
- 607 (b) invite them to make written representations within a period specified in the invitation¹⁴.

If the person specified in the application makes representations that he is not an appropriate person to do what the direction would require him to do, the Office of Rail Regulation must decide that issue in advance of considering any other matters which may be relevant in deciding whether to give the direction¹⁵. If that person makes such representations but the Office of Rail Regulation decides that he is an appropriate person to do what the direction would require him to do, the Office of Rail Regulation must¹⁶: (i) notify him of that decision¹⁷; and (ii) invite him to make written representations within a period specified in the invitation about any other matters which may be relevant in deciding whether to give the direction¹⁸. The Office of Rail Regulation must¹⁹ send the applicant a copy of any representations received by it in response to any invitation under head (b) or head (ii) above²⁰; and invite him to make further written representations within a period specified in the invitation²¹. The Office of Rail Regulation may substitute as the applicant any other person if²² the applicant²³, the other person²⁴ and the appropriate facilities authority (if it is neither the applicant nor the other person)²⁵ consent to the substitution²⁶. The applicant may, by giving notice in writing to the Office of Rail Regulation, withdraw or suspend the application at any time before the Office of Rail Regulation decides whether to give the direction²⁷.

The Office of Rail Regulation may direct²⁸: (A) the person specified in the application²⁹; (B) the applicant³⁰; or (C) any other person (apart from the appropriate facilities authority)³¹, to provide it with any information required by it in order to decide whether to give the direction³². If a person fails to comply with such a direction, the High Court may, on the application of the

Office of Rail Regulation, make such order as it thinks fit for requiring the failure to be made good³³.

- 1 le under the Railways Act 1993 s 16A (as added and amended) (see PARA 165 ante): see s 16C(1) (as added and amended: see note 3 infra). For the meaning of references to 'railway facility' for these purposes see PARA 165 note 10 ante.
- 2 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by ibid s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. The Office of Rail Regulation must prepare, publish, and from time to time revise, a code of practice supplementing ss 16A-16G (as added and amended): see PARA 170 post.
- 3 Ibid s 16C(1) (ss 16C-16D added by the Transport Act 2000 s 223; the Railways Act 1993 s 16C(1) amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)).
- 4 Railways Act 1993 s 16C(2)(a) (as added: see note 3 supra).
- 5 Ibid s 16C(2)(b) (as added: see note 3 supra).
- 6 Ibid s 16C(2)(c) (as added: see note 3 supra).
- 7 For the meaning of 'notice' see PARA 34 note 4 ante.
- 8 For the meaning of 'appropriate facilities authority' see PARA 165 note 3 ante.
- 9 Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).
- 10 Ibid s 16C(3) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 11(1)).
- 11 Railways Act 1993 s 16C(4) (as added: see note 3 supra). As to any representations made as mentioned in the text see s 16E(3) (as added and amended); and PARA 167 post.
- 12 Ibid s 16D(1) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).
- 13 Railways Act 1993 s 16D(1)(a) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 11(1)).
- 14 Railways Act 1993 s 16D(1)(b) (as added: see note 3 supra).
- 15 Ibid s 16D(2) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).
- 16 Railways Act 1993 s 16D(3) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).
- 17 Railways Act 1993 s 16D(3)(a) (as added: see note 3 supra).
- 18 Ibid s 16D(3)(b) (as added: see note 3 supra).
- 19 Ibid s 16D(4) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).
- 20 Railways Act 1993 s 16D(4)(a) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).
- 21 Railways Act 1993 s 16D(4)(b) (as added: see note 3 supra). As to representations made in response to such an invitation as mentioned in the text see s 16E(3) (as added and amended); and PARA 167 post.
- 22 Ibid s 16D(5) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).
- 23 Railways Act 1993 s 16D(5)(a) (as added: see note 3 supra).
- 24 Ibid s 16D(5)(b) (as added: see note 3 supra).

25 Ibid s 16D(5)(c) (as added (see note 3 supra); amended by the Railways Act 2005 Sch 1 Pt 1 para 11(1)).

26 Railways Act 1993 s 16D(5) (as added and amended: see note 22 supra). This provision is subject to s 16D(6) (as added and amended) (see the text and note 27 infra): see s 16D(5) (as so added and amended).

27 Ibid s 16D(6) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

28 Railways Act 1993 s 16D(7) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

29 Railways Act 1993 s 16D(7)(a) (as added: see note 3 supra).

30 Ibid s 16D(7)(b) (as added: see note 3 supra).

31 Ibid s 16D(7)(c) (as added (see note 3 supra); amended by the Railways Act 2005 Sch 1 Pt 1 para 11(1)).

32 Railways Act 1993 s 16D(7) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)). As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see s 146 (cited in PARA 416 post).

33 Ibid s 16D(8) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). Such an order may provide that all the costs or expenses of and incidental to the application must be borne by either the person who failed to comply or, in the case of a company or other association, any officers who are responsible for the failure to comply: Railways Act 1993 s 16D(9) (as added: see note 3 supra).

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167. Determination of application for direction to provide, improve or develop railway facilities.

The Office of Rail Regulation¹ may only give a direction to a person² to provide, improve or develop a railway facility³ if it is satisfied that the person will be adequately rewarded for providing, improving or developing the railway facility in accordance with the direction⁴. In considering whether it is so satisfied, the Office of Rail Regulation must take into account (in particular)⁵:

- 608 (1) any receipts obtained or likely to be obtained by the person (from the appropriate facilities authority⁶, passengers, operators⁷ of railway services⁸ or any other persons) in connection with, or as a result of, the provision, improvement or development of the railway facility⁹; and
- 609 (2) any other benefit obtained or likely to be obtained by him in consequence of its provision, improvement or development¹⁰.

Representations made by the applicant for a direction¹¹ may, in particular, include representations as to matters which he considers the Office of Rail Regulation should take into account in deciding whether the person to whom the direction would be given would be adequately rewarded for doing what it would require him to do¹².

If the Office of Rail Regulation does not consider it right to give a direction in the terms applied for (or to reject the application), it may give a direction in modified terms¹³. The Office of Rail Regulation may include supplementary provisions in any such direction, including (in particular) provision¹⁴:

- 610 (a) adding detail (for instance, as to the time by which, or standard to which, the person to whom it is given is to do anything which it requires him to do)¹⁵; and
- 611 (b) imposing requirements on the applicant (for instance, to make arrangements for rewarding the person to whom the direction is given or to make payments to him)¹⁶.

Before giving a direction which is in modified terms or includes supplementary provisions, the Office of Rail Regulation must¹⁷:

- 612 (i) notify its intention to give a direction to the applicant, the appropriate facilities authority (if it is not the applicant) and any other persons who the Office of Rail Regulation considers ought to be notified¹⁸; and
- 613 (ii) invite them to make written representations within a period specified in the invitation¹⁹;

and if the applicant makes representations that the direction should not be given, the Office of Rail Regulation must not give it²⁰.

Whatever the Office of Rail Regulation's decision on an application, it must notify the decision²¹ to the person specified in the application²², to the applicant²³ and to any other persons whom it considers ought to be notified²⁴. The Office of Rail Regulation may direct the person specified in the application or the applicant to pay²⁵: (A) to the other of those persons²⁶; or (B) to any other person directed by it to provide information required by it in order to determine the application²⁷, any such amount as it considers appropriate in respect of costs incurred in connection with the application²⁸.

1 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt 1 (ss 4-83) (as amended): see PARA 33 ante. The Office of Rail Regulation must prepare, publish, and from time to time revise, a code of practice supplementing ss 16A-16G (as added and amended): see PARA 170 post.

2 *Ie* under *ibid* s 16A (as added and amended) (see PARA 165 ante): see s 16E(1) (as added and amended: see note 4 *infra*).

3 For the meaning of references to 'railway facility' for these purposes see PARA 165 note 10 ante.

4 Railways Act 1993 s 16E(1) (ss 16E-16F added by the Transport Act 2000 s 223; the Railways Act 1993 s 16E(1) amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), (b)).

5 Railways Act 1993 s 16E(2) (as added (see note 4 *supra*); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

6 For the meaning of 'appropriate facilities authority' see PARA 165 note 3 ante.

7 For the meaning of 'operator' see PARA 83 note 7 ante.

8 For the meaning of 'railway services' see PARA 82 ante.

9 Railways Act 1993 s 16E(2)(a) (as added (see note 4 *supra*); amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 11(1)).

10 Railways Act 1993 s 16E(2)(b) (as added: see note 4 *supra*).

11 *Ie* made by the applicant either under *ibid* s 16C(4) (as added) (see PARA 166 ante) (s 16E(3)(a) (as added: see note 4 *supra*)) or in response to an invitation under s 16D(4) (as added and amended) (see PARA 166 ante) (s 16E(3)(b) (as so added)).

12 *Ibid* s 16E(3) (as added (see note 4 *supra*); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

13 Railways Act 1993 s 16F(1) (as added (see note 4 *supra*); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

14 Railways Act 1993 s 16F(2) (as added (see note 4 *supra*); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

15 Railways Act 1993 s 16F(2)(a) (as added: see note 4 *supra*).

16 *Ibid* s 16F(2)(b) (as added: see note 4 *supra*).

17 *Ibid* s 16F(3) (as added (see note 4 *supra*); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

18 Railways Act 1993 s 16F(3)(a) (as added (see note 4 *supra*); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c); and the Railways Act 2005 Sch 1 Pt 1 para 11(1)).

19 Railways Act 1993 s 16F(3)(b) (as added: see note 4 *supra*).

20 *Ibid* s 16F(3) (as added and amended: see note 17 *supra*).

21 *Ibid* s 16F(4) (as added (see note 4 *supra*); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b)).

22 Railways Act 1993 s 16F(4)(a) (as added: see note 4 supra).

23 Ibid s 16F(4)(b) (as added: see note 4 supra).

24 Ibid s 16F(4)(c) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

25 Railways Act 1993 s 16F(5) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

26 Railways Act 1993 s 16F(5)(a) (as added: see note 4 supra).

27 Ibid s 16F(5)(b) (as added: see note 4 supra). The text refers to a direction for information under s 16D(7) (as added and amended) (see PARA 166 ante): see s 16F(5)(b) (as added).

28 Ibid s 16F(5) (as added (see note 4 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(b)).

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168. Effect of direction to provide, improve or develop railway facilities.

A person must not be regarded as failing to comply with a direction to provide, improve or develop a railway facility¹ if he has done everything which it is reasonably practicable to do in order to comply with the direction². If a person is unable to comply with such a direction because he does not have the necessary powers or rights (including rights over land), he must not be taken to have done everything which it is reasonably practicable to do in order to comply with the direction unless he has done everything which it is reasonably practicable to do in order to obtain those powers or rights³.

1 I.e. a direction under the Railways Act 1993 s 16A (as added and amended) (see PARA 165 ante): see s 16G(1) (as added: see note 2 infra). For the meaning of references to 'railway facility' for these purposes see PARA 165 note 10 ante.

2 Ibid s 16G(1) (s 16G added by the Transport Act 2000 s 223).

3 Railways Act 1993 s 16G(2) (as added: see note 2 supra).

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169. Revocation or variation of direction to provide, improve or develop railway facilities.

A direction to provide, improve or develop a railway facility¹ may only be revoked or varied by the Office of Rail Regulation²:

- 614 (1) on the application of the person to whom the direction was given, the applicant for the direction or the appropriate facilities authority³ (if it was not the applicant)⁴; and
- 615 (2) after consultation with the other persons with power to apply for a revocation or variation⁵.

Such a direction may only be varied on an application by the applicant for the direction or the appropriate facilities authority if the Office of Rail Regulation is satisfied that the person to whom the direction was given will be adequately rewarded for providing, improving or developing the railway facility in accordance with the varied direction⁶. The Office of Rail Regulation may grant an application for the variation or revocation of a direction by the applicant for the direction or the appropriate facilities authority on condition that it secures that any such compensation as the Office of Rail Regulation may specify is paid to the person to whom the direction was given in respect of any liabilities incurred, or other things done, by him in complying with the direction⁷.

¹ I.e. a direction under the Railways Act 1993 s 16A (as added and amended) (see PARA 165 ante): see s 16G(3) (as added: see note 2 infra). For the meaning of references to 'railway facility' for these purposes see PARA 165 note 10 ante.

² Ibid s 16G(3) (s 16G added by the Transport Act 2000 s 223; the Railways Act 1993 s 16G(3) amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)).

As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. The Office of Rail Regulation must prepare, publish, and from time to time revise, a code of practice supplementing ss 16A-16G (as added and amended): see PARA 170 post.

³ For the meaning of 'appropriate facilities authority' see PARA 165 note 3 ante.

⁴ Railways Act 1993 s 16G(3)(a) (as added (see note 2 supra); amended by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 11(1)).

⁵ Railways Act 1993 s 16G(3)(b) (as added: see note 2 supra).

⁶ Ibid s 16G(4) (as added (see note 2 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 11(1)). In satisfying itself as to the matters referred to in the text, the Office of Rail Regulation must take into account (in particular) the matters specified in the Railways Act 1993 s 16E(2) (as added and amended) (see PARA 167 ante): see s 16G(4) (as so added and amended).

⁷ Ibid s 16G(5) (as added (see note 2 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 11(1)).

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170. Code of practice in relation to direction to provide, improve or develop railway facilities.

The Office of Rail Regulation¹ must prepare, and from time to time revise, a code of practice supplementing the provisions which govern applications for, and the issuing of, directions to provide, improve or develop railway facilities², and that Office must publish the code in such manner as it considers appropriate³. The code of practice may, in particular: (1) set out minimum periods to be specified in invitations to make representations⁴; (2) include provision about requesting the provision of information prior to giving a direction⁵; (3) specify principles according to which directions to pay costs are to be given⁶; and (4) make provision about the consultation required before a direction is revoked or varied by the Office of Rail Regulation⁷.

The Office of Rail Regulation must have regard to the code of practice in the exercise of its functions⁸ under the provisions which govern applications for, and the issuing of, directions to provide, improve or develop railway facilities⁹.

1 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante.

2 Ie supplementing ibid ss 16A-16G (as added and amended) (see PARA 165 et seq ante): see s 16H(1) (as added and amended: see note 3 infra).

3 Ibid s 16H(1) (s 16H added by the Transport Act 2000 s 223; the Railways Act 1993 s 16H(1) amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), (b)).

The *Code of Practice for the Application of Sections 16A to 16I of the Railways Act 1993* (December 2006) is available, at the date at which this volume states the law, at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

4 Railways Act 1993 s 16H(3)(a) (as added: see note 3 supra).

5 Ibid s 16H(3)(b) (as added: see note 3 supra). The text refers to a direction for information under s 16D(7) (as added and amended) (see PARA 166 ante): see s 16H(3)(b) (as added).

6 Ibid s 16H(3)(c) (as added: see note 3 supra). The text refers to a direction to pay costs under s 16F(5) (as added and amended) (see PARA 167 ante): see s 16H(3)(c) (as added).

7 Ibid s 16H(3)(d) (as added: see note 3 supra). The text refers to the consultation required under s 16G(3) (b) (as added) (see PARA 169 ante): see s 16H(3)(d) (as added).

8 As to the meaning of 'functions' see PARA 7 note 12 ante.

9 Railways Act 1993 s 16H(2) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c)). The text refers to the exercise of the Office of Rail Regulation's functions under the Railways Act 1993 ss 16A-16G (as added and amended) (see PARA 165 et seq ante): see s 16H(2) (as so added and amended).

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B. POWER TO REVIEW ACCESS CHARGES AND LINKED LICENCE CONDITIONS

171. Scope of access charges review.

An access agreement¹ may provide, or may be treated as providing, for the Office of Rail Regulation² to undertake reviews of the terms of that agreement as to³:

- 616 (1) the amounts payable under the agreement by one of the parties to the other⁴; and
- 617 (2) the times at which, and the manner in which, those amounts are payable⁵.

Where the Office of Rail Regulation undertakes such a review, it must, at the same time, review the conditions of every linked licence⁶ both in relation to the matters mentioned in head (1) and head (2) above⁷ and in relation to the matters about which that Office is provided with information by the Secretary of State⁸. A review by the Office of Rail Regulation of both the terms of an access agreement as to the matters mentioned in head (1) and head (2) above⁹, and the conditions of a linked licence¹⁰, is referred to as an 'access charges review'¹¹.

An access charges review must include a consideration of¹²: (a) the time at which the next access charges review is to be undertaken in relation to both the access agreement in question and every linked licence¹³; and (b) the circumstances in which it would be appropriate to undertake such a review before that time¹⁴.

1 For the meaning of 'access agreement' see PARA 105 note 2 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of access agreements, access contracts and installation access contracts see PARA 56 ante.

3 Ibid s 19A, Sch 4A para 1 (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24; the Railways Act 1993 Sch 4A para 1 substituted by the Railways Act 2005 s 4, Sch 4 paras 1, 2). The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

4 Railways Act 1993 Sch 4A para 1(a) (Sch 4A as added, Sch 4A para 1 as substituted: see note 3 supra).

5 Ibid Sch 4A para 1(b) (Sch 4A as added, Sch 4A para 1 as substituted: see note 3 supra).

6 For these purposes, 'linked licence', in relation to an access agreement, means a licence of which the holder is either the facility owner (or installation owner) who is a party to the agreement or a person other than that owner who has an estate or interest in the railway facility or network installation to which the agreement relates or who has a right over it: ibid Sch 4A para 1A(4) (Sch 4A as added (see note 3 supra); Sch 4A para 1A added by the Railways Act 2005 Sch 4 paras 1, 2). For the meaning of 'facility owner' see PARA 102 note 1 ante; for the meaning of 'installation owner' see PARA 104 note 3 ante; for the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante; and for the meaning of 'railway facility' see PARA 102 note 1 ante.

7 Railways Act 1993 Sch 4A para 1A(1)(a) (as added: see note 6 supra).

8 Ibid Sch 4A para 1A(1)(b) (as added: see note 6 supra). The text refers to information about desired outputs and finances provided under Sch 4A para 1D (as added) (see PARA 174 post): see Sch 4A para 1A(b) (as so added).

9 Ibid Sch 4A para 1A(2)(a) (as added: see note 6 supra).

10 Ibid Sch 4A para 1A(2)(b) (as added: see note 6 supra).

11 Ibid Sch 4A para 1A(2) (as added: see note 6 supra).

12 Ibid Sch 4A para 1A(3) (as added: see note 6 supra).

13 Ibid Sch 4A para 1A(3)(a) (as added: see note 6 supra).

14 Ibid Sch 4A para 1A(3)(b) (as added: see note 6 supra).

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172. Access charges reviews suggested by the Secretary of State.

Where the Secretary of State¹ suggests to the Office of Rail Regulation² that an access charges review³ should be carried out in any case⁴, but where that Office decides not to carry out the suggested review⁵, that Office must provide the Secretary of State⁶ with its reasons for that decision⁷.

1 le or the Scottish Ministers: see the Railways Act 1993 s 19A, Sch 4A para 1B (as added: see note 4 infra). As to the Scottish Ministers generally see PARA 124 note 7 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising (or deciding not to exercise) his functions under Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by ibid s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (as amended): see PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of access agreements, access contracts and installation access contracts see PARA 56 ante.

3 For the meaning of 'access charges review' see PARA 171 ante.

4 Railways Act 1993 s 19A, Sch 4A para 1B para (a) (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24; the Railways Act 1993 Sch 4A para 1B added by the Railways Act 2005 s 4, Sch 4 paras 1, 2). The heading to, and content of, the Railways Act 2005 s 4 states that the aim of the amending provisions of Sch 4 is to broaden the scope of access charges reviews and to increase the influence of the Secretary of State (and of the Scottish Ministers) over such reviews for the application of strategy: see s 4. This increase in influence inevitably limits the Office of Rail Regulation's former jurisdiction: see PARA 5 et seq ante.

The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

5 Railways Act 1993 Sch 4A para 1B para (b) (as added: see note 4 supra).

6 See note 1 supra.

7 Railways Act 1993 Sch 4A para 1B (as added: see note 4 supra).

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173. Notice of an access charges review.

Before beginning an access charges review¹, the Office of Rail Regulation² must give notice³ of its proposal to undertake the review to each of the following⁴: (1) the Secretary of State⁵; (2) the Treasury⁶; (3) the parties to the access agreement⁷ in question⁸; and (4) such other persons as the Office of Rail Regulation considers appropriate⁹. Such a notice must set out:

- 618 (a) the period to which the Office of Rail Regulation expects the review to relate (the 'review period')¹⁰;
- 619 (b) the date by which the Secretary of State¹¹ needs to provide the information that has to be provided about desired outputs and finances¹²; and
- 620 (c) any conditions which that Office requires to be satisfied in the period ending with that date if it is to proceed with the review¹³.

The period set out under head (a) above must be the one which: (i) begins with the time as from which the Office of Rail Regulation expects that any changes resulting from the review would fall to be implemented¹⁴; and (ii) ends with the time as from which it thinks it likely (in the absence of special circumstances making an earlier review appropriate) that any changes resulting from the next access charges review in relation to the same agreement and licence would fall to be implemented¹⁵. The date set out under head (b) above must be, in a case which the Office of Rail Regulation is satisfied is a case of urgency, not less than four weeks after the date of the notice¹⁶ and, in any other case, not less than three months after the date of the notice¹⁷. However, before setting out a date under head (b) above that is less than three months after the date of the notice, the Office of Rail Regulation must consult each of the persons to whom the notice is to be given¹⁸.

1 For the meaning of 'access charges review' see PARA 171 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of access agreements, access contracts and installation access contracts see PARA 56 ante.

3 For the meaning of 'notice' see PARA 34 note 4 ante.

4 Railways Act 1993 s 19A, Sch 4A para 1C(1) (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24; the Railways Act 1993 Sch 4A para 1C added by the Railways Act 2005 s 4, Sch 4 paras 1, 2). As to the amending provisions of the Railways Act 2005 s 4, Sch 4 see PARA 172 note 4 ante.

The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

5 Railways Act 1993 Sch 4A para 1C(1)(a) (as added: see note 4 supra). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (as amended) see s 4 (as amended); and PARA 33 ante. The Scottish Ministers also must be given notice of a review: see Sch 4A para 1C(1)(b) (as so added). However, no notice is required to be given under Sch 4A para 1C(1) (as added) to the Secretary of State or the Scottish Ministers, in the case of the Secretary of State, if the facility or installation to which the relevant

agreement relates is situated wholly in Scotland or, in the case of the Scottish Ministers, if the facility or installation to which the relevant agreement relates is situated wholly in England and Wales: Sch 4A para 1C(2) (as so added). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante; and for the meaning of 'railway facility' generally see PARA 102 note 1 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

6 Ibid Sch 4A para 1C(1)(c) (as added: see note 4 supra). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 For the meaning of 'access agreement' see PARA 105 note 2 ante.

8 Railways Act 1993 Sch 4A para 1C(1)(d) (as added: see note 4 supra).

9 Ibid Sch 4A para 1C(1)(e) (as added: see note 4 supra).

10 Ibid Sch 4A para 1C(3)(a) (as added: see note 4 supra).

11 le or the Scottish Ministers or (as the case may be) each of the Secretary of State and the Scottish Ministers: see ibid Sch 4A para 1C(3)(b) (as added); and see note 5 supra.

12 Ibid Sch 4A para 1C(3)(b) (as added: see note 4 supra). The text refers to the information about desired outputs and finances that has to be provided under Sch 4A para 1D (as added) (see PARA 174 post): see Sch 4A para 1C(3)(b) (as added).

13 Ibid Sch 4A para 1C(3)(c) (as added: see note 4 supra).

14 Ibid Sch 4A para 1C(4)(a) (as added: see note 4 supra).

15 Ibid Sch 4A para 1C(4)(b) (as added: see note 4 supra).

16 See ibid Sch 4A para 1C(5)(a) (as added: see note 4 supra).

17 See ibid Sch 4A para 1C(5)(b) (as added: see note 4 supra).

18 See ibid Sch 4A para 1C(6) (as added: see note 4 supra).

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174. Provision of information by Secretary of State.

Where a notice of an access charges review¹ is given to the Secretary of State², he must provide the Office of Rail Regulation³:

- 621 (1) with information about what he wants to be achieved by railway activities in Great Britain⁴ as a whole during the review period⁵; and
- 622 (2) with such information as it is reasonable for him to provide about the public financial resources⁶ that are or are likely to become available to be applied during the review period for purposes that contribute (directly or indirectly) towards the achievement of what he wants⁷.

The information that may be provided as falling within head (1) above includes objectives and standards to be achieved in the course of carrying on railway activities⁸. Those objectives and standards may include, in particular, objectives and standards with respect to any of the following matters:

- 623 (a) the capacity of networks⁹;
- 624 (b) the frequency of railway passenger services¹⁰;
- 625 (c) journey times¹¹;
- 626 (d) reliability of railway services (both in terms of punctuality and otherwise)¹²;
- 627 (e) the taking of measures to prevent or mitigate overcrowding¹³;
- 628 (f) levels and types of fares¹⁴;
- 629 (g) the quality of information provided to passengers¹⁵;
- 630 (h) the accessibility of railway services to people with disabilities¹⁶;
- 631 (i) the carrying out of major projects to improve railway services¹⁷;
- 632 (j) the protection of persons from dangers arising from the operation of railways¹⁸.

Such an obligation to provide information must be discharged before the date set out in the notice given¹⁹ of an access charges review²⁰; but may be discharged by a notification that refers the Office of Rail Regulation to information previously provided under this duty²¹. The Office of Rail Regulation may at any time, by notice to each of the persons to whom the notice of an access charges review was given²², fix a later date for such provision of information²³.

Where the Secretary of State²⁴ so provides the Office of Rail Regulation with information, he may also, at the same time, make a suggestion to that Office setting out his opinion about²⁵: (i) when the next access charges review should be undertaken in relation to both the access agreement²⁶ in question and every linked licence²⁷; and (ii) the circumstances in which it would be appropriate to undertake such a review before that time²⁸.

1 le a notice under the Railways Act 1993 s 19A, Sch 4A para 1C (as added) (see PARA 173 ante): see Sch 4A para 1D(1) (as added: see note 3 infra).

2 As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under *ibid* Pt I (as amended) see s 4 (as amended); and PARA 33 ante. The Scottish Ministers are also under a duty to provide

information where notice of a review has been given to them: see Sch 4A para 1D(2), (10) (as added: see note 3 *infra*); and PARA 173 note 5 *ante*. As to the Scottish Ministers generally see PARA 124 note 7 *ante*.

3 Ibid s 19A, Sch 4A para 1D(1) (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24; the Railways Act 1993 Sch 4A paras 1D-1E added by the Railways Act 2005 s 4, Sch 4 paras 1, 2). As to the amending provisions of the Railways Act 2005 s 4, Sch 4 see PARA 172 note 4 *ante*. The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

As to the Office of Rail Regulation see PARA 49 *et seq ante*. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 *ante*. As to the Secretary of State's obligation to provide information where the Scottish Ministers are under the same duty see Sch 4A para 1D(5) (as so added). However, neither the Secretary of State nor the Scottish Ministers are required to provide information for the purposes of a review at any time after a decision has been made by the Office of Rail Regulation not to proceed with the review because of an actual or expected failure of the conditions set out under Sch 4A para 1C(3)(c) (as added) (see PARA 173 *ante*) to be satisfied: Sch 4A para 1D(8) (as so added).

4 For these purposes, 'railway activities' means activities consisting in, or involving, any of the following (ibid Sch 4A para 1D(9) (as added: see note 3 *supra*)):

- 122 (1) providing railway services (Sch 4A para 1D(9)(a) (as so added));
- 123 (2) making available railway facilities (Sch 4A para 1D(9)(b) (as so added));
- 124 (3) making use of such facilities (Sch 4A para 1D(9)(c) (as so added));
- 125 (4) using railway assets (Sch 4A para 1D(9)(d) (as so added));
- 126 (5) allowing others to use such assets (Sch 4A para 1D(9)(e) (as so added)).

For the meaning of 'Great Britain' see PARA 29 note 3 *ante*; for the meaning of 'railway assets' see PARA 83 note 7 *ante*; for the meaning of 'railway facilities' see PARA 102 note 1 *ante*; and for the meaning of 'railway services' see PARA 82 *ante*.

5 Railways Act 1993 Sch 4A para 1D(1)(a) (as added: see note 3 *supra*). For the meaning of 'review period' see PARA 173 *ante*.

6 For these purposes, 'public financial resources' means money charged on and payable out of the Consolidated Fund or money provided by Parliament (or, in the case of Scotland, the Scottish Consolidated Fund): ibid Sch 4A para 1D(11) (as added: see note 3 *supra*). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 *et seq*; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

7 Ibid Sch 4A para 1D(1)(b) (as added: see note 3 *supra*).

8 Ibid Sch 4A para 1D(3) (as added: see note 3 *supra*).

9 Ibid Sch 4A para 1D(4)(a) (as added: see note 3 *supra*). The text refers to capacity in terms of types and numbers of trains: see Sch 4A para 1D(4)(a) (as so added). For the meaning of 'network' see PARA 82 note 8 *ante*; and for the meaning of 'train' see PARA 82 note 2 *ante*.

10 Ibid Sch 4A para 1D(4)(b) (as added: see note 3 *supra*). For the meaning of 'railway passenger service' see PARA 36 note 2 *ante*.

11 Ibid Sch 4A para 1D(4)(c) (as added: see note 3 *supra*).

12 Ibid Sch 4A para 1D(4)(d) (as added: see note 3 *supra*).

13 Ibid Sch 4A para 1D(4)(e) (as added: see note 3 *supra*).

14 Ibid Sch 4A para 1D(4)(f) (as added: see note 3 *supra*).

15 Ibid Sch 4A para 1D(4)(g) (as added: see note 3 *supra*).

16 Ibid Sch 4A para 1D(4)(h) (as added: see note 3 *supra*).

17 Ibid Sch 4A para 1D(4)(i) (as added: see note 3 *supra*).

18 Ibid Sch 4A para 1D(4)(j) (as added: see note 3 supra).

19 Ie under ibid Sch 4A para 1C (as added) (see PARA 173 ante): see Sch 4A para 1D(6)(a) (as added: see note 3 supra). However, if a later date is fixed under Sch 4A para 1D(7) (as added) (see the text and notes 22-23 infra), that later date applies: see Sch 4A para 1D(6)(a) (as so added).

20 Ibid Sch 4A para 1D(6)(a) (as added: see note 3 supra).

21 Ibid Sch 4A para 1D(6)(b) (as added: see note 3 supra). The text refers to information previously provided under Sch 4A para 1D (as added): see Sch 4A para 1D(6)(b) (as so added).

22 Ie under ibid Sch 4A para 1C (as added) (see PARA 173 ante): see Sch 4A para 1D(7) (as added: see note 3 supra).

23 Ibid Sch 4A para 1D(7) (as added: see note 3 supra).

24 Ie or the Scottish Ministers: see ibid Sch 4A para 1E (as added); and see note 2 supra.

25 Ibid Sch 4A para 1E (as added: see note 3 supra).

26 For the meaning of 'access agreement' see PARA 105 note 2 ante.

27 Railways Act 1993 Sch 4A para 1E para (a) (as added: see note 3 supra). For the meaning of 'linked licence' see PARA 171 note 6 ante.

28 Ibid Sch 4A para 1E para (b) (as added: see note 3 supra).

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175. Revision of information provided by Secretary of State.

If, at any time in the course of an access charges review¹, it appears to the Office of Rail Regulation² that the information that has been provided to it³ shows that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of what the Secretary of State⁴ wants to be achieved, that Office must so notify the Secretary of State⁵; and that Office must send a copy of every such notification to the Treasury⁶. On being so notified, the Secretary of State⁷ may revise any information provided to the Office of Rail Regulation, together with any suggestion made to the Office of Rail Regulation⁸ regarding the timing of the next access charges review⁹, and, if the information or such a suggestion is revised, must notify the revisions to that Office¹⁰.

Where the Office of Rail Regulation has already given a notification in this way¹¹ with respect to any information, it is required to give a further notification¹² with respect to that information (or any revision of it) only if¹³ a revision has been made in response to its previous notification¹⁴ and if it has not previously given a notification in respect of an earlier revision of the information¹⁵.

1 For the meaning of 'access charges review' see PARA 171 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of access agreements, access contracts and installation access contracts see PARA 56 ante.

3 I.e. by the Secretary of State (or by the Scottish Ministers) under *ibid* Sch 4A para 1D (as added) (see PARA 174 ante) or, taking it all together, the information that has been so provided by the Secretary of State and the Scottish Ministers: see Sch 4A para 1F(1) (as added: see note 5 *infra*).

As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, i.e. the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (as amended) see s 4 (as amended); and PARA 33 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

4 I.e. or the Scottish Ministers or both the Secretary of State and the Scottish Ministers: see *ibid* Sch 4A para 1F(1) (as added: see note 5 *infra*).

5 *Ibid* s 19A, Sch 4A para 1F(1) (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24; the Railways Act 1993 Sch 4A para 1F added by the Railways Act 2005 s 4, Sch 4 paras 1, 2). As to the Secretary of State see note 4 *supra*. As to the amending provisions of the Railways Act 2005 s 4, Sch 4 see PARA 172 note 4 ante. The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

6 Railways Act 1993 Sch 4A para 1F(2) (as added: see note 5 *supra*). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 I.e. or the Scottish Ministers or both the Secretary of State and the Scottish Ministers (as the case may be): see *ibid* Sch 4A para 1F(3) (as added: see note 5 *supra*).

8 I.e. under *ibid* Sch 4A para 1E (as added) (see PARA 174 ante): see Sch 4A para 1F(3)(a) (as added: see note 5 *supra*).

- 9 Ibid Sch 4A para 1F(3)(a) (as added: see note 5 supra).
- 10 Ibid Sch 4A para 1F(3)(b) (as added: see note 5 supra). Any notification under Sch 4A para 1F(3)(b) (as added) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State (or Scottish Ministers) in accordance with Sch 4A para 1F(1) (as added) (see the text and notes 1-5 supra): Sch 4A para 1F(4) (as so added).
- 11 Ie under ibid Sch 4A para 1F (as added): see Sch 4A para 1F(5) (as added: see note 5 supra).
- 12 See note 11 supra.
- 13 Railways Act 1993 Sch 4A para 1F(5) (as added: see note 5 supra).
- 14 Ibid Sch 4A para 1F(5)(a) (as added: see note 5 supra).
- 15 Ibid Sch 4A para 1F(5)(b) (as added: see note 5 supra).

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176. Notification of likely adverse effect on interests of certain providers of railway services.

If, at any time in the course of an access charges review¹, it appears to the Office of Rail Regulation² that it is likely that the implementation of the review will adversely affect the interests of persons providing railway passenger services³ or of persons providing services for the carriage of goods by railway⁴, that Office must so notify the Secretary of State⁵. Where the Office of Rail Regulation gives such notification in respect of a review relating to an access agreement⁶ to which a facility owner⁷ is a party, the notification must include⁸:

- 633 (1) its assessment of the measures that the facility owner is likely to be required to take, as a consequence of the implementation of the review, in order to meet obligations of his arising under the access agreement in question or under any other access agreement to which he is a party⁹; and
- 634 (2) its estimate of the cost to the facility owner of taking those measures¹⁰.

On being so notified¹¹, the Secretary of State¹² may revise any information provided¹³ to the Office of Rail Regulation, together with any suggestion made to the Office of Rail Regulation¹⁴ regarding the timing of the next access charges review and, if the information or such a suggestion is revised, must notify the revisions to that Office¹⁵.

Where the Office of Rail Regulation has already given a notification in this way¹⁶, it is required to give a further notification¹⁷ only if¹⁸ information provided to it has been revised in response to its notification¹⁹ and if it has not previously given a notification in respect of an earlier revision of the information²⁰.

1 For the meaning of 'access charges review' see PARA 171 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of access agreements, access contracts and installation access contracts see PARA 56 ante.

3 For the meaning of 'railway passenger service' see PARA 36 note 2 ante.

4 For the meaning of 'providing or operating services for the carriage of goods by railway' see PARA 82 note 3 ante.

5 Railways Act 1993 s 19A, Sch 4A para 1G(1) (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24; the Railways Act 1993 Sch 4A para 1G added by the Railways Act 2005 s 4, Sch 4 paras 1, 2). As to the amending provisions of the Railways Act 2005 s 4, Sch 4 see PARA 172 note 4 ante. The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

The Office of Rail Regulation must notify the Secretary of State as mentioned in the text in the case of a review notice which was given to him under the Railways Act 1993 Sch 4A para 1C (as added) (see PARA 173 ante) but the Scottish Ministers must be so notified, in the case of a review notice which was given to them under Sch 4A para 1C (as added): see Sch 4A para 1G(1) (as so added). As to the Secretary of State see PARA 35 ante; and as

to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (as amended) see s 4 (as amended); and PARA 33 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante.

6 For the meaning of 'access agreement' see PARA 105 note 2 ante.

7 For the meaning of 'facility owner' see PARA 102 note 1 ante.

8 Railways Act 1993 Sch 4A para 1G(2) (as added: see note 5 supra).

9 Ibid Sch 4A para 1G(2)(a) (as added: see note 5 supra).

10 Ibid Sch 4A para 1G(2)(b) (as added: see note 5 supra).

11 Ie under ibid Sch 4A para 1G(1) (as added) (see the text and notes 1-5 supra): see Sch 4A para 1G(3) (as added: see note 5 supra).

12 Ie or the Scottish Ministers or (as the case may be) each of the Secretary of State and the Scottish Ministers: see ibid Sch 4A para 1G(3) (as added: see note 5 supra).

13 Ie under ibid Sch 4A para 1D (as added) (see PARA 174 ante): see Sch 4A para 1G(3) (as added: see note 5 supra).

14 Ie under ibid Sch 4A para 1E (as added) (see PARA 174 ante): see Sch 4A para 1G(3) (as added: see note 5 supra).

15 Ibid Sch 4A para 1G(3) (as added: see note 5 supra). Any notification under Sch 4A para 1G(3) (as added) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State (or the Scottish Ministers) in accordance with Sch 4A para 1G(1) (as added) (see the text and notes 1-5 supra): Sch 4A para 1G(4) (as so added).

16 Ie under ibid Sch 4A para 1G (as added): see Sch 4A para 1G(5) (as added: see note 5 supra).

17 See note 16 supra.

18 Railways Act 1993 Sch 4A para 1G(5) (as added: see note 5 supra).

19 Ibid Sch 4A para 1G(5)(a) (as added: see note 5 supra).

20 Ibid Sch 4A para 1G(5)(b) (as added: see note 5 supra).

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177. Duty of Office of Rail Regulation to heed information provided by Secretary of State.

The Office of Rail Regulation¹ must conduct an access charges review² in the manner that it considers is most likely to secure that the implementation of the review will make the best and most practicable contribution to the achievement of what the Secretary of State³ wants to be achieved by railway activities in Great Britain⁴ as a whole⁵.

Where in the case of an access charges review the Office of Rail Regulation considers⁶ that the public financial resources⁷ that are or are likely to become available will be inadequate to secure the achievement of everything that the Secretary of State wants to be achieved⁸, it is to be for that Office to determine, for the purposes of the review, how much of what is wanted should be achieved using (but only for the purposes for which they may be applied) all the public financial resources that it considers are or are likely to be available⁹.

In conducting an access charges review, the Office of Rail Regulation must have regard to the consequences of compliance by a facility owner¹⁰ who is a party to the access agreement¹¹ in question with any terms either of that agreement¹², or of any other access agreement to which that facility owner is a party¹³, that it considers are relevant to a matter notified¹⁴ as having a likely adverse effect on the party's interests (including, in particular, a term requiring the facility owner to pay compensation or to take mitigatory measures)¹⁵.

In considering the time at which the next access charges review is to be undertaken (in relation to both the access agreement in question and every linked licence¹⁶) and the circumstances in which it would be appropriate to undertake such a review before that time¹⁷, the Office of Rail Regulation must have regard to any suggestion made to it by the Secretary of State¹⁸, and to any revision of that suggestion¹⁹.

1 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the duty of the Office of Rail Regulation to maintain a register including the provisions of access agreements, access contracts and installation access contracts see PARA 56 ante.

2 For the meaning of 'access charges review' see PARA 171 ante.

3 As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended) see s 4 (as amended); and PARA 33 ante.

4 For the meaning of 'railway activities' see PARA 174 note 4 ante; definition applied by *ibid* s 19A (as added and amended: see note 5 infra), Sch 4A para 1H(5)(a) (as added: see note 5 infra). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

5 *Ibid* s 19A, Sch 4A para 1H(1) (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24; the Railways Act 1993 Sch 4A para 1H added by the Railways Act 2005 s 4, Sch 4 paras 1, 2). As to the amending provisions of the Railways Act 2005 s 4, Sch 4 see PARA 172 note 4 ante. The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

The duty of the Office of Rail Regulation under the Railways Act 1993 Sch 4A para 1H(1) (as added) also applies to what the Scottish Ministers want to be achieved by Scottish railway activities: see Sch 4A para 1H(1) (as so added). As to the Scottish Ministers generally see PARA 124 note 7 ante.

For these purposes, what the Secretary of State (or the Scottish Ministers) wants (or want) must be determined in every case in accordance with the information provided in that case under Sch 4A para 1D (as added) (see PARA 174 ante), and with any revisions notified under Sch 4A para 1F(3)(b) (as added) (see PARA 175 ante) or Sch 4A para 1G(3)(b) (as added) (see PARA 176 ante): Sch 4A para 1H(5)(b) (as so added). The Office of Rail Regulation must have regard to the financial information so provided and revised whenever considering what is likely to make the best and most practicable contribution to the achievement of what the Secretary of State (or the Scottish Ministers) wants (or want): Sch 4A para 1H(5)(c) (as so added).

6 Ie notwithstanding any notification or revision under *ibid* Sch 4A para 1F (as added) (see PARA 175 ante) or Sch 4A para 1G (as added) (see PARA 176 ante): see Sch 4A para 1H(2) (as added: see note 5 supra).

7 For the meaning of 'public financial resources' see PARA 174 note 6 ante; definition applied by *ibid* Sch 4A para 1H(5)(a) (as added: see note 5 supra).

8 Ie or everything that the Scottish Ministers want to be achieved, or everything that both the Secretary of State and the Scottish Ministers want to be achieved: see *ibid* Sch 4A para 1H(2) (as added: see note 5 supra).

9 *Ibid* Sch 4A para 1H(2) (as added: see note 5 supra). The provision set out in the text constitutes a cap on the financial jurisdiction of the Office of Rail Regulation and is the most significant change to its powers introduced by the Railways Act 2005: see PARA 5 note 14 ante.

10 For the meaning of 'facility owner' see PARA 102 note 1 ante.

11 For the meaning of 'access agreement' see PARA 105 note 2 ante.

12 Railways Act 1993 Sch 4A para 1H(3)(a) (as added: see note 5 supra).

13 *Ibid* Sch 4A para 1H(3)(b) (as added: see note 5 supra).

14 Ie under *ibid* Sch 4A para 1G (as added) (see PARA 176 ante): see Sch 4A para 1H(3) (as added: see note 5 supra).

15 *Ibid* Sch 4A para 1H(3) (as added: see note 5 supra).

16 For the meaning of 'linked licence' see PARA 171 note 6 ante.

17 Ie in considering the matters mentioned in the Railways Act 1993 Sch 4A para 1A(3) (as added) (see PARA 171 ante).

18 Ie under *ibid* Sch 4A para 1E (as added) (see PARA 174 ante): see Sch 4A para 1H(4) (as added: see note 5 supra).

19 *Ibid* Sch 4A para 1H(4) (as added: see note 5 supra).

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178. Procedure for implementation of access charges review.

Provision is made¹ in relation to the procedure for the implementation of an access charges review² as follows³:

- 635 (1) initiation of the review by means of a review notice⁴;
- 636 (2) notices of agreement⁵;
- 637 (3) notices terminating the access agreement ('termination notices')⁶;
- 638 (4) review implementation notices⁷;
- 639 (5) new review notices or Competition Commission references⁸;
- 640 (6) references to the Competition Commission⁹;
- 641 (7) report on a reference to the Competition Commission¹⁰;
- 642 (8) changes following a report under head (7) above¹¹;
- 643 (9) the Competition Commission's power to veto changes or to make changes¹²;
- 644 (10) post-reference termination notices terminating the access agreement¹³.

¹ See as provided for by the Railways Act 1993 s 19A, Sch 4A paras 4-16 (as added and amended) (see heads (1) to (10) in the text): see Sch 4A para 2 (as added: see note 3 infra).

² For the meaning of 'access charges review' see PARA 171 ante.

³ See the Railways Act 1993 s 19A, Sch 4A para 2(1) (s 19A added by the Transport Act 2000 s 231(1); and amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 Sch 4A added by the Transport Act 2000 s 231(2), Sch 24). The Railways Act 1993 s 19A (as added and amended) binds the Crown: s 150(1)(a) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (2)).

Any procedure relating to the implementation of an access charges review for which the access agreement or any linked licence makes provision does not apply: Railways Act 1993 Sch 4A para 2(2) (as so added). For the meaning of 'access agreement' see PARA 105 note 2 ante; and for the meaning of 'linked licence' see PARA 171 note 6 ante.

⁴ See *ibid* Sch 4A para 4 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)-(c); and the Railways Act 2005 s 4, Sch 4 paras 1, 4(1), (2)).

⁵ See the Railways Act 1993 Sch 4A para 5 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

⁶ See the Railways Act 1993 Sch 4A para 6 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 4 paras 1, 5).

⁷ See the Railways Act 1993 Sch 4A para 7 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 s 59(6), Sch 13).

⁸ See the Railways Act 1993 Sch 4A para 8 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c); and the Railways Act 2005 Sch 4 paras 1, 6).

⁹ See the Railways Act 1993 Sch 4A para 9 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)-(c); and the Railways Act 2005 Sch 4 paras 1, 7(1)-(4)) and the Railways Act 1993 Sch 4A para 10A (Sch 4A as added (see note 3 supra); Sch 4A para 10A added by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (15)(a); and amended by the Communications Act 2003 s 389(1), Sch 16 para 4(1), (4)).

¹⁰ See the Railways Act 1993 Sch 4A para 11 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b); and the Enterprise Act 2002 Sch 25 para 30(1), (15)(b)).

11 See the Railways Act 1993 Sch 4A para 12 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 Sch 4 paras 1, 8(1)-(5)).

12 See the Railways Act 1993 Sch 4A para 13 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)), the Railways Act 1993 Sch 4A para 14 (Sch 4A as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 4 paras 1, 9) and the Railways Act 1993 Sch 4A para 15 (Sch 4A as added (see note 3 supra); amended by the Enterprise Act 2002 Sch 25 para 30(1), (15)(c); the Communications Act 2003 Sch 16 para 4(1), (4); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c); and the Railways Act 2005 Sch 4 paras 1, 10(1), (2)).

13 See the Railways Act 1993 Sch 4A para 16 (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)).

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C. ENFORCEMENT OF CONDITIONS, DUTIES AND REQUIREMENTS

179. Power to require information for enforcement purposes.

Where it appears to the appropriate authority¹ that a relevant operator² may have contravened or be contravening a relevant condition or requirement³, or a final or provisional order⁴ made by the appropriate authority, the appropriate authority may, for any purpose connected with such of its functions for enforcement⁵ as are exercisable in relation to that matter, serve on any person⁶ a notice⁷ signed by the appropriate authority and⁸:

- 645 (1) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the appropriate authority or to any person appointed by the appropriate authority for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control⁹; or
- 646 (2) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the appropriate authority such information as may be specified or described in the notice¹⁰.

However, no person is so required to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings¹¹.

A person who without reasonable excuse fails to do anything required of him by such a notice is guilty of an offence¹².

A person who intentionally alters, suppresses¹³ or destroys any document which he has been required by any such notice to produce is guilty of an offence¹⁴.

If a person makes default in complying with such a notice, the court may, on the application of the appropriate authority, make such order as the court thinks fit for requiring the default to be made good¹⁵.

1 In the Railways Act 1993 Pt I (ss 4-83) (as amended), 'appropriate authority' means: (1) in relation to any relevant condition or requirement in the case of a licence holder, the Office of Rail Regulation; and (2) in relation to any relevant condition or requirement in the case of a franchisee, a franchise operator, or a person under closure restrictions, the Secretary of State: s 55(10) (definition amended by the Transport Act 2000 ss 215, s 216, 274, Sch 16 paras 8, 35(1), (3)(a), Sch 17 Pt I paras 1, 11(1), (3)(a), 17, 26(a), Sch 31 Pt IV; the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 ss 1(1), 59(1), Sch 1 Pt 1 para 21(1), (8)(a), (b), Sch 13 Pt 1). As to the meaning of references to a relevant condition or requirement for the purposes of this definition see the Railways Act 1993 s 55(11A), (11B) (added by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(6)). For the meanings of 'franchise operator' and 'franchisee' see PARA 130 note 4 ante; and for the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante. For these purposes, 'person under closure restrictions' means a person who is under: (a) a duty under the Railways Act 2005 s 22(8) (proposal by service operator to discontinue non-franchised services: see PARA 145 ante), s 26(8) (proposal by operator to close passenger network: see PARA 149 ante), s 29(8) (proposal by operator to close station: see PARA 152 ante) or s 37(2) (discontinuance of experimental passenger services: see PARA 162 ante) not to discontinue a railway passenger service or an experimental passenger service or not to discontinue the operation or use of a network or station (or part of a network or station); (b) a duty to comply with any requirement imposed under s 33(2)(i) (closure requirements imposed on operators: see PARA 158 ante); or (c) a duty to comply with conditions to which he has agreed under s 34(5) (conditions of minor modification

determination: see PARA 159 ante); Railways Act 1993 s 55(11) (definition amended by the Competition Act 1998 s 54(3), Sch 10 para 15(7)(b)); the Transport Act 2000 Sch 17 Pt I paras 1, 11(1), (4); and the Railways Act 2005 Sch 11 paras 1, 7(5)). For the meaning of 'experimental passenger service' for these purposes see PARA 161 note 2 ante; for the meaning of 'network' see PARA 82 note 8 ante; for the meaning of 'railway passenger service' see PARA 36 note 2 ante; and for the meaning of 'station' see PARA 82 note 5 ante.

As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (as amended): see PARA 33 ante. As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising (or deciding not to exercise) his functions under Pt I (as amended), see s 4 (as amended); and PARA 33 ante. As to the maintenance of registers by the Secretary of State and by the Office of Rail Regulation giving the provisions of every final or provisional order made, every revocation of such an order and every notice given that such an order does not have to be made see PARAS 37, 56 ante.

As to things done under or for the purposes of any provision of ss 55-58 (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1, Sch 1 para 26. As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

2 In the Railways Act 1993 Pt I (as amended), 'relevant operator' means a licence holder, a franchisee, a franchise operator who is a party to the franchise agreement or a person under closure restrictions: s 55(10) (definition substituted by the Railways Act 2005 Sch 11 paras 1, 7(4)). For the meaning of 'franchise agreement' see PARA 130 note 4 ante.

3 In the Railways Act 1993 Pt I (as amended), 'relevant condition or requirement' means: (1) in the case of a licence holder, any condition of his licence; (2) in the case of a franchisee, or any franchise operator who is a party to the franchise agreement, any term of the franchise agreement; and (3) in the case of a person under closure restrictions, any duty mentioned in s 55(11) (as amended) (see note 1 heads (a) to (c) supra) to which he is subject: s 55(10) (definition amended by the Railways Act 2005 Sch 11 paras 1, 7(3)). As to the meaning of 'contravention' in relation to any condition see PARA 29 note 13 ante.

4 For these purposes, 'final order' means an order under the Railways Act 1993 s 55 (as amended) (see PARA 180 post), other than a provisional order or an order under s 55(7B) (as added): s 55(10) (definition amended by the Railways Act 2005 Sch 11 paras 1, 7(2)). 'Provisional order' means an order under the Railways Act 1993 s 55 (as amended) which, if not previously confirmed in accordance with s 55(4) (as amended), will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order: s 55(10). The power of the Secretary of State to make orders under the Railways Act 1993 s 143 (as amended) does not apply to the power to make provisional or final orders under s 55 (as amended): see PARA 35 note 12 ante.

5 The functions under ibid s 55 (as amended) (see PARA 180 post) or s 57A (as added and amended) (see PARA 183 post): see s 58(1) (as amended: see note 6 infra). As to the meaning of 'functions' see PARA 7 note 12 ante.

6 Ibid s 58(1) (amended by the Transport Act 2000 s 252, Sch 16 paras 8, 38(1), (2), Sch 27 paras 17, 33(1), (2)(a), (b)).

Without prejudice to the Railways Act 2005 s 44 (exclusion of liability for breach of statutory duty under Pt 4 (ss 22-45): see PARA 145 et seq ante), nothing in the Railways Act 1993 s 55 (as amended) or in s 56 (as amended) (see PARA 181 post) or s 57 (as amended) (see PARA 182 post) or ss 57A-57F (as added and amended) (see PARA 183 et seq post) or s 58 (as amended) excludes the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement: s 55(9) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(1)).

The Railways Act 1993 s 58(1)-(3), (6)-(7) (as amended) binds the Crown: s 150(1)(b) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (3)). See further PARA 29 note 13 ante. In relation to the application of the Railways Act 1993 s 58 (as amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(c); and PARA 98 note 5 ante.

7 For the meaning of 'notice' see PARA 34 note 4 ante.

8 Railways Act 1993 s 58(2) (amended by the Transport Act 2000 Sch 16 paras 8, 38(1), (3)).

9 Railways Act 1993 s 58(2)(a) (amended by the Transport Act 2000 Sch 16 paras 8, 38(1), (3)). Any reference in the Railways Act 1993 s 58 (as amended) to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form: s 58(7). As to the meaning of 'information' see PARA 34 note 5 ante.

10 Ibid s 58(2)(b) (amended by the Transport Act 2000 Sch 16 paras 8, 38(1), (3)). As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see s 146 (cited in PARA 416 post).

11 Ibid s 58(3).

12 See ibid s 58(4); and PARA 413 post.

13 Any reference in ibid s 58 (as amended) to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form: s 58(7).

14 See ibid s 58(5); and PARA 413 post.

15 Ibid s 58(6) (amended by the Transport Act 2000 Sch 16 paras 8, 38(1), (3)). Any such order as in mentioned in the text may provide that all the costs or expenses of and incidental to the application are to be borne by the person in default or by any officers of a company or other association who are responsible for its default: Railways Act 1993 s 58(6) (as so amended).

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180. Final or provisional orders for securing compliance.

Where the appropriate authority¹ is satisfied that a relevant operator² is contravening, or is likely to contravene, any relevant condition or requirement³, it must by a final order⁴ make such provision as is requisite for the purpose of securing compliance with that condition or requirement⁵.

However, where it appears to the appropriate authority⁶:

- 647 (1) that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement⁷; and
- 648 (2) that it is requisite that a provisional order be made⁸,

it must (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement⁹. The appropriate authority must confirm a provisional order, with or without modifications, if¹⁰:

- 649 (a) it is satisfied that the relevant operator to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement¹¹; and
- 650 (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement¹².

However, the appropriate authority must not make a final order, or make or confirm a provisional order, in relation to a relevant operator if it is satisfied that the general duties imposed on it¹³ preclude the making or, as the case may be, the confirmation of the order¹⁴. The appropriate authority must also consider whether the most appropriate way of proceeding is under the Competition Act 1998¹⁵. If the appropriate authority is satisfied:

- 651 (i) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate authority for the time being to be appropriate for the relevant operator to take for the purpose of securing or facilitating compliance with the condition or requirement in question¹⁶; or
- 652 (ii) that the contravention or apprehended contravention will not adversely affect the interests of users of railway services or lead to any increase in public expenditure¹⁷,

it must only make a final order, or make or confirm a provisional order, if it considers it appropriate to do so¹⁸. The Secretary of State is not required, in respect of any contravention or apprehended contravention of the terms of a franchise agreement¹⁹, to make a final order, or to make or to confirm a provisional order, if he considers that the contravention or apprehended contravention is trivial and that it would be inappropriate, for that reason, to make or to confirm the order²⁰.

Where the Secretary of State so decides not to make a final order, or not to make or to confirm a provisional order²¹, or where the Office of Rail Regulation so decides not to make a final order, or not to make or to confirm a provisional order²², the appropriate authority must serve notice of its decision on the relevant operator and publish the notice in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them²³.

A final or provisional order:

- 653 (A) requires the relevant operator to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified²⁴;
- 654 (B) takes effect at such time, being the earliest practicable time, as is determined by or under the order²⁵; and
- 655 (C) may be revoked at any time by the appropriate authority²⁶.

The provision that may be made in a final or provisional order includes, in particular, provision requiring the relevant operator to pay in the event of a specified contravention of the order, to the Secretary of State, such reasonable sum in respect of the contravention as is specified in, or determined in accordance with, the order in such manner, at such place and by such date as is so specified or determined²⁷.

1 For the meaning of 'appropriate authority' for these purposes see PARA 179 note 1 ante. As to things done under or for the purposes of any provision of the Railways Act 1993 ss 55-58 (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1, Sch 1 para 26. As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

2 For the meaning of 'relevant operator' for these purposes see PARA 179 note 2 ante.

3 For the meaning of 'relevant condition or requirement' for these purposes see PARA 179 note 3 ante. As to the meaning of 'contravention' in relation to any condition see PARA 29 note 13 ante.

4 For the meaning of 'final order' for these purposes see PARA 179 note 4 ante.

5 Railways Act 1993 s 55(1) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 35(1), (2); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 21(1), (2)). The Railways Act 1993 s 55(1) (as amended) is subject to ss 55(2)-(5C) (as amended) (see the text and notes 6-20 infra) and s 56 (as amended) (see PARA 181 post): see s 55(1) (as so amended). Without prejudice to the Railways Act 2005 s 44 (exclusion of liability for breach of statutory duty under Pt 4 (ss 22-45): see PARA 145 et seq ante), nothing in the Railways Act 1993 s 55 (as amended) or in ss 56-58 (as amended) (see PARA 181 et seq post) excludes the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement: s 55(9) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(1)).

The Railways Act 1993 s 55(1)-(7), (9)-(11) (as amended) binds the Crown: s 150(1)(b) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (3)). See further PARA 29 note 13 ante. In relation to the application of the Railways Act 1993 s 55 (as amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(c); and PARA 98 note 5 ante.

6 Railways Act 1993 s 55(2) (amended by the Transport Act 2000 s 252, Sch 16 paras 8, 35(1), (2), Sch 27 paras 17, 30(1), (3); and the Railways Act 2005 Sch 1 Pt 1 para 21(1), (2)). The Railways Act 1993 s 55(2) (as amended) is subject to s 55(5)-(5C) (as amended) (see the text and notes 13-20 infra): see s 55(2) (as so amended).

7 Ibid s 55(2)(a).

8 Ibid s 55(2)(b). In determining for the purposes of s 55(2)(b) whether it is requisite that a provisional order be made, the appropriate authority must have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made: s 55(3) (amended by the Transport Act 2000 Sch 16 paras 8, 35(1), (2)(a)). For the meaning of 'provisional order' for these purposes see PARA 179 note 4 ante.

9 Railways Act 1993 s 55(2) (as amended: see note 6 supra).

10 Ibid s 55(4) (amended by the Transport Act 2000 Sch 16 paras 8, 35(1), (2)(a), Sch 27 paras 17, 30(1), (3); and the Railways Act 2005 Sch 1 Pt 1 para 21(1), (2)). The Railways Act 1993 s 55(4) (as amended) is subject to ss 55(5)-(5C) (as amended) (see the text and notes 13-20 infra) and s 56 (as amended) (see PARA 181 post): see s 55(4) (as so amended).

11 Ibid s 55(4)(a) (amended by the Transport Act 2000 Sch 16 paras 8, 35(1), (2)(b)).

12 Railways Act 1993 s 55(4)(b).

13 Ie the duties imposed by ibid s 4 (as amended) (see PARA 33 ante): see s 55(5) (as amended: see note 14 infra). Both the Office of Rail Regulation and the Secretary of State have general duties imposed on them by s 4 (as amended), being the objectives at which they must aim when exercising, or deciding not to exercise, their functions under Pt I (as amended): see PARA 33 ante. As to the Secretary of State see PARA 35 ante; and as to the Office of Rail Regulation see PARA 49 et seq ante. As to the maintenance of registers by the Secretary of State and by the Office of Rail Regulation giving the provisions of every final or provisional order made, every revocation of such an order and every notice given that such an order does not have to be made see PARAS 37, 56 ante.

14 Ibid s 55(5) (amended by the Transport Act 2000 ss 226(1)(a), 274, Sch 16 paras 8, 35(1), (2), Sch 27 paras 17, 30(1), (5), Sch 31 Pt IV; and the Railways Act 2005 s 59(6), Sch 1 Pt 1 para 21(1), (3), Sch 13 Pt 1).

15 The Secretary of State is not to make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions unless the Secretary of State has given notice to the Office of Rail Regulation specifying a period within which it may give notice to him if it considers that the most appropriate way of proceeding is under the Competition Act 1998 (see PARA 186 et seq post), and that period has expired, and the Office of Rail Regulation has not given notice to the Secretary of State within that period that it so considers (or, if it has, that it has withdrawn it): Railways Act 1993 s 55(5ZA) (added by the Transport Act 2000 Sch 17 Pt I paras 1, 11(1), (2); amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt I paras 1, 3(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 21(1), (4)). For the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante; for the meaning of 'notice' see PARA 34 note 4 ante; and for the meaning of 'person under closure restrictions' see PARA 179 note 1 ante.

The Office of Rail Regulation is not to make a final order, or make or confirm a provisional order, if it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998: Railways Act 1993 s 55(5A) (added by the Competition Act 1998 s 54(3), Sch 10 para 15(6); amended by the Transport Act 2000 Sch 31 Pt IV; and the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3(a), (b)).

16 Railways Act 1993 s 55(5B)(a) (s 55(5B) added by the Transport Act 2000 s 226(1)(b)).

17 Railways Act 1993 s 55(5B)(b) (as added: see note 16 supra).

18 Ibid s 55(5B) (as added: see note 16 supra).

19 For the meaning of 'franchise agreement' see PARA 130 note 4 ante.

20 Railways Act 1993 s 55(5C) (s 55(5C), (5D) added by the Railways Act 2005 Sch 1 Pt 1 para 21(1), (5)).

21 Ie because of provision contained in the Railways Act 1993 s 55(5) (as amended) (see the text and notes 13-14 supra) or s 55(5ZA) (as added and amended) (see note 15 supra): see s 55(5D)(a) (as added: see note 20 supra).

22 Ie because of provision contained in ibid s 55(5) (as amended) (see the text and notes 13-14 supra) or s 55(5A) (as added and amended) (see note 15 supra) or s 55(5B) (as added) (see the text and notes 16-18 supra): see s 55(5D)(b) (as added: see note 20 supra).

23 Ibid s 55(6) (amended by the Transport Act 2000 Sch 16 paras 8, 35(1), (2)(b); and the Railways Act 2005 Sch 1 Pt 1 para 21(1), (6)).

24 Railways Act 1993 s 55(7)(a).

25 Ibid s 55(7)(b).

26 Ibid s 55(7)(c) (amended by the Transport Act 2000 Sch 16 paras 8, 35(1), (2)(a)).

27 Ibid s 55(7A) (s 55(7A)-(7C) added by the Transport Act 2000 s 225(2); the Railways Act 1993 s 55(7A) amended by the Railways Act 2005 Sch 1 Pt 1 para 21(1), (7)).

The amount of the sum referred to in the text may not exceed 10% of the turnover of the relevant operator determined in accordance with an order made by the Secretary of State: Railways Act 1993 s 55(7B) (as so added). Such an order must not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament: s 55(7B) (as so added). As to the order so made see the Railways Act 1993 (Determination of Turnover) Order 2005, SI 2005/2185, arts 3, 5.

If the whole or any part of the sum is not paid by the date by which it is to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17 (as amended) (see CIVIL PROCEDURE vol 12 (2009) PARA 1149): Railways Act 1993 s 55(7C) (as so added).

The requirement to prepare and publish a statement of policy under s 57B (as added and amended) (see PARA 183 post) applies, with modifications, in relation to sums required to be paid by virtue of s 55(7A) (as added and amended) as it applies to penalties: see *Economic enforcement policy and penalties statement* (April 2006), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

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181. Procedural requirements for final or provisional orders securing compliance.

Before the appropriate authority¹ makes a final order² or confirms a provisional order³, it must give notice⁴:

- 656 (1) stating that it proposes to make or confirm the order and setting out its effect⁵;
- 657 (2) setting out: (a) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed⁶; (b) the acts or omissions which, in its opinion, constitute or would constitute contraventions of that condition or requirement⁷; and (c) the other facts which, in its opinion, justify the making or confirmation of the order⁸; and
- 658 (3) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made⁹.

The appropriate authority must consider any representations or objections which are duly made and not withdrawn¹⁰; and is not to make a final order with modifications, or confirm a provisional order with modifications, except¹¹:

- 659 (i) with the consent to the modifications of the relevant operator to whom the order relates¹²; or
- 660 (ii) after complying with the following requirements¹³, namely that the appropriate authority must¹⁴: (A) serve on the relevant operator to whom the order relates such notice as appears to it requisite of its proposal to make or confirm the order with modifications¹⁵; (B) unless the proposed modifications are trivial, in that notice specify a period (not being less than seven days from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made¹⁶; and (c) consider any representations or objections which are duly made and not withdrawn¹⁷.

As soon as practicable after making a final order or making or confirming a provisional order, the appropriate authority must serve a copy of the order on the relevant operator to whom the order relates and publish the order in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it¹⁸.

Before revoking a final order or a provisional order which has been confirmed, the appropriate authority must give notice stating that it proposes to revoke the order and setting out the effect of its revocation, and specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made¹⁹. The appropriate authority must consider any representations or objections which are duly made and not withdrawn²⁰.

¹ For the meaning of 'appropriate authority' for these purposes see PARA 179 note 1 ante. As to things done under or for the purposes of any provision of the Railways Act 1993 ss 55-58 (as amended) so far as they were

done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1, Sch 1 para 26. As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

2 For the meaning of 'final order' for these purposes see PARA 179 note 4 ante.

3 For the meaning of 'provisional order' for these purposes see PARA 179 note 4 ante.

4 Railways Act 1993 s 56(1) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 36(a), (b)). A notice under the Railways Act 1993 s 56(1) (as amended) must be given: (1) by publishing the notice in such manner as the appropriate authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them (s 56(2)(a) (amended by the Transport Act 2000 Sch 16 paras 8, 36(a))); and (2) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the relevant operator to whom the order relates (Railways Act 1993 s 56(2) (b)). Where the Office of Rail Regulation serves a copy of a notice under s 56(1) (as amended) on a licence holder, it must also serve a copy on the Secretary of State: s 56(2A) (added by the Transport Act 2000 s 216, Sch 17 Pt I paras 1, 12; amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt I paras 1, 3(a), (b); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 22). For the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante; for the meaning of 'notice' see PARA 34 note 4 ante; and for the meaning of 'relevant operator' for these purposes see PARA 179 note 2 ante. As to the Secretary of State see PARA 35 ante; and as to the Office of Rail Regulation see PARA 49 et seq ante. Both the Office of Rail Regulation and the Secretary of State have general duties imposed on them by the Railways Act 1993 s 4 (as amended), being the objectives at which they must aim when exercising, or deciding not to exercise, their functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the maintenance of registers by the Secretary of State and by the Office of Rail Regulation giving the provisions of every final or provisional order made, every revocation of such an order and every notice given that such an order does not have to be made see PARAS 37, 56 ante.

Without prejudice to the Railways Act 2005 s 44 (exclusion of liability for breach of statutory duty under Pt 4 (ss 22-45): see PARA 145 et seq ante), nothing in the Railways Act 1993 s 55 (as amended) (see PARA 180 ante) or in s 56 (as amended) or s 57 (as amended) (see PARA 182 post) or ss 57A-57F (as added and amended) (see PARA 183 et seq post) or s 58 (as amended) (see PARA 179 ante) excludes the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement: s 55(9) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(1)). For the meaning of 'relevant condition or requirement' for these purposes see PARA 179 note 3 ante. As to the meaning of 'contravention' in relation to any condition or requirement see PARA 29 note 13 ante.

The Railways Act 1993 s 56 (as amended) binds the Crown: s 150(1)(b) (amended by the Transport Act 2000 Sch 27 paras 17, 42(1), (3)). See further PARA 29 note 13 ante. In relation to the application of the Railways Act 1993 s 56 (as amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(c); and PARA 98 note 5 ante.

5 Railways Act 1993 s 56(1)(a) (amended by the Transport Act 2000 Sch 16 paras 8, 36(b)).

6 Railways Act 1993 s 56(1)(b)(i).

7 Ibid s 56(1)(b)(ii) (amended by the Transport Act 2000 Sch 16 paras 8, 36(c)).

8 Railways Act 1993 s 56(1)(b)(iii) (amended by the Transport Act 2000 Sch 16 paras 8, 36(c)).

9 Railways Act 1993 s 56(1)(c) (amended by the Transport Act 2000 s 226(2)(a)).

10 Railways Act 1993 s 56(1) (as amended: see note 4 supra).

11 Ibid s 56(3) (amended by the Transport Act 2000 Sch 16 paras 8, 36(a)).

12 Railways Act 1993 s 56(3)(a). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

13 Ibid s 56(3)(b).

14 Ibid s 56(4) (amended by the Transport Act 2000 Sch 16 paras 8, 36(a)).

15 Railways Act 1993 s 56(4)(a) (amended by the Transport Act 2000 Sch 16 paras 8, 36(c)).

16 Railways Act 1993 s 56(4)(b) (amended by the Transport Act 2000 s 226(2)(b)).

17 Railways Act 1993 s 56(4)(c).

18 Ibid s 56(5) (amended by the Transport Act 2000 Sch 16 paras 8, 36(a), (b)). If a relevant operator is aggrieved by a penalty he may question its validity on certain limited grounds: see PARA 182 post.

19 Railways Act 1993 s 56(6) (amended by the Transport Act 2000 s 226(2)(c), Sch 16 paras 8, 36(a), (b)).

A notice under the Railways Act 1993 s 56(6) (as amended) must be given by publishing the notice in such manner as the appropriate authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and by serving a copy of the notice on the relevant operator to whom the order relates: s 56(8) (amended by the Transport Act 2000 Sch 16 paras 8, 36(a)).

20 Railways Act 1993 s 56(6) (as amended: see note 19 supra).

If, after giving notice under s 56(6) (as amended), the appropriate authority decides not to revoke the order to which the notice relates, it must give notice of its decision: s 56(7) (amended by the Transport Act 2000 Sch 16 paras 8, 36). A notice under the Railways Act 1993 s 56(7) (as amended) must be given by publishing the notice in such manner as the appropriate authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and by serving a copy of the notice on the relevant operator to whom the order relates: s 56(8) (as amended: see note 19 supra).

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182. Validity and effect of final or provisional orders securing compliance.

If the relevant operator¹ to whom a final or provisional order² relates is aggrieved by the order and desires to question its validity³:

- 661 (1) on the ground that its making or confirmation was not within the powers of the appropriate authority⁴; or
- 662 (2) on the ground that any of the procedural requirements⁵ have not been complied with in relation to it⁶,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the court⁷. On any such application, the court, if satisfied that the making or confirmation of the order was not within those powers of the appropriate authority or that the interests of the relevant operator have been substantially prejudiced by a failure to comply with those procedural requirements, may quash the order or any provision of the order⁸. If such an application is made in relation to a provision of an order requiring the payment of a sum in the event of a contravention, and the sum would be payable before the time when the application is determined, it need not be paid until that time⁹. Where such an application is so made, the court, if satisfied that the making or confirmation of the order was not within those powers of the appropriate authority or that the interests of the relevant operator have been substantially prejudiced by a failure to comply with those procedural requirements¹⁰, may (instead of quashing the order or the provision of the order) make provision¹¹:

- 663 (a) substituting for the sum (or may make provision for determining a sum) specified in the order such lesser sum (or such other provision for determining a sum) as the court considers appropriate in all the circumstances of the case¹²; and
- 664 (b) substituting for the date by which the sum is to be paid specified in or determined in accordance with the order such later date as the court considers appropriate in all the circumstances of the case¹³.

The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of the order¹⁴. Where such a duty is owed to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person¹⁵; and, in any such proceedings brought against a relevant operator¹⁶, it is a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order¹⁷. Without prejudice to any such right which any person may have¹⁸ to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order is enforceable by civil proceedings by the appropriate authority for an injunction or for any other appropriate relief or remedy¹⁹.

1 For the meaning of 'relevant operator' for these purposes see PARA 179 note 2 ante.

2 For the meanings of 'final order' and 'provisional order' for these purposes see PARA 179 note 4 ante.

3 Railways Act 1993 s 57(1). Except as provided by s 57 (as amended), the validity of a final or provisional order may not be questioned by any legal proceedings whatever: s 57(3).

Without prejudice to the Railways Act 2005 s 44 (exclusion of liability for breach of statutory duty under Pt 4 (ss 22-45): see PARA 145 et seq ante), nothing in the Railways Act 1993 s 55 (as amended) (see PARA 180 ante) or in s 56 (as amended) (see PARA 181 ante) or s 57 (as amended) or ss 57A-57F (as added and amended) (see PARA 183 et seq post) or s 58 (as amended) (see PARA 179 ante) excludes the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement: s 55(9) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(1)). For the meaning of 'relevant condition or requirement' for these purposes see PARA 179 note 3 ante. As to the meaning of 'contravention' in relation to any condition, order or requirement see PARA 29 note 13 ante.

The Railways Act 1993 s 57 (as amended) binds the Crown: s 150(1)(b) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (3)). See further PARA 29 note 13 ante. In relation to the application of the Railways Act 1993 s 57 (as amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(c); and PARA 98 note 5 ante.

4 Railways Act 1993 s 57(1)(a). The text refers to the powers of the appropriate authority under s 55 (as amended) (see PARA 180 ante): see s 57(1)(a). For the meaning of 'appropriate authority' for these purposes see PARA 179 note 1 ante.

As to things done under or for the purposes of any provision of the Railways Act 1993 ss 55-58 (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1, Sch 1 para 26. As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

5 Ie the requirements of the Railways Act 1993 s 56 (as amended) (see PARA 181 ante): see s 57(1)(b).

6 Ibid s 57(1)(b).

7 Ibid s 57(1). For these purposes, 'court' means the High Court: see s 57(9) (amended by the Transport Act 2000 Sch 27 paras 17, 32(1), (4)).

Where a relevant operator to whom a final or provisional order relates has made an application pursuant to the Railways Act 1993 s 57(1) questioning the validity of that order, the making of that application does not affect either his obligation to comply with the order or the right which any person may have to bring civil proceedings against him in pursuance of either s 57(5) (see the text and note 15 infra) or s 57(7) (as amended) (see the text and notes 18-19 infra): s 57(8).

8 Ibid s 57(2) (amended by the Transport Act 2000 s 274, Sch 27 paras 17, 32(1), (2), Sch 31 Pt IV).

9 Railways Act 1993 s 57(2A) (s 57(2A)-(2D) added by the Transport Act 2000 Sch 27 paras 17, 32(1), (3)).

10 Ie if satisfied as mentioned in the Railways Act 1993 s 57(2) (as amended) (see the text and note 8 supra): see s 57(2B) (as added: see note 9 supra).

11 Ibid s 57(2B) (as added: see note 9 supra).

12 Ibid s 57(2C)(a) (as added: see note 9 supra).

Where the court substitutes a lesser sum (or different provision for determining a sum) it may require the payment of interest on the new sum at such rate, and from such date, as it determines: s 57(2D) (as so added).

13 Ibid s 57(2C)(b) (as added: see note 9 supra).

Where the court specifies as the date by which the sum is to be paid a date before the determination of the application it may require the payment of interest on the sum from that date at such rate as it determines: s 57(2D) (as so added).

14 Ibid s 57(4).

15 Ibid s 57(5).

16 Ie in pursuance of ibid s 57(5) (see the text and note 15 supra): see s 57(6).

17 Ibid s 57(6).

18 Ie by virtue of ibid s 57(5) (see the text and note 15 supra): see s 57(7) (as amended: see note 19 infra).

19 Ibid s 57(7) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 37).

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183. Penalties imposed for contravention of condition or requirement or order.

If the appropriate authority¹ is satisfied that a relevant operator² has contravened or is contravening:

- 665 (1) a relevant condition or requirement³; or
- 666 (2) a final or provisional order⁴ made by the appropriate authority⁵,

the appropriate authority may impose on the relevant operator a penalty of such amount as is reasonable⁶. A penalty is payable to the Secretary of State⁷; and the amount of a penalty imposed on a relevant operator may not exceed 10 per cent of his turnover determined in accordance with an order made by the Secretary of State⁸. However, the Secretary of State⁹ may not impose a penalty on a licence holder¹⁰ or on a person under closure restrictions¹¹: (a) unless the Secretary of State has given notice to the Office of Rail Regulation¹² specifying a period within which it may give notice to him if it considers that the most appropriate way of proceeding is under the Competition Act 1998¹³; (b) unless that period has expired¹⁴; and (c) unless the Office of Rail Regulation has not given notice to the Secretary of State within that period that it so considers (or, if it has, that it has withdrawn it)¹⁵. The Office of Rail Regulation must not impose a penalty if it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998¹⁶.

The Secretary of State and the Office of Rail Regulation must each prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount¹⁷. A statement of policy may include provision for a decision whether to impose a penalty, or the determination of the amount of any penalty, in respect of the contravention of any relevant condition or requirement or order to be influenced by¹⁸:

- 667 (i) the desirability of securing compliance with that relevant condition or requirement or order¹⁹;
- 668 (ii) the consequences or likely consequences of anything which has been or is being done or omitted to be done in contravention of that relevant condition or requirement or order²⁰; and
- 669 (iii) the desirability of deterring contraventions of relevant conditions and requirements and final and provisional orders²¹.

In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the Secretary of State and the Office of Rail Regulation must have regard to any statement of his or its policy published at the time when the contravention occurred²². The Secretary of State and the Office of Rail Regulation must publish a statement of policy in the manner that appears most suitable for bringing it to the attention of those likely to be affected by it²³.

1 For the meaning of 'appropriate authority' for these purposes see PARA 179 note 1 ante. As to things done under or for the purposes of any provision of the Railways Act 1993 ss 55-58 (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1(1), Sch 1 para 26. As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

2 For the meaning of 'relevant operator' for these purposes see PARA 179 note 2 ante.

3 Railways Act 1993 s 57A(1)(a) (ss 57A-57B, 57D-57E added by the Transport Act 2000 s 225(1)). For the meaning of 'relevant condition or requirement' for these purposes see PARA 179 note 3 ante. As to the meaning of 'contravention' in relation to any condition, order or requirement see PARA 29 note 13 ante.

The Railways Act 1993 ss 57A-57F (as added and amended) bind the Crown: s 150(1)(b) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (3)). See further PARA 29 note 13 ante. In relation to the application of the Railways Act 1993 ss 57A-57F (as added and amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(c); and PARA 98 note 5 ante.

4 For the meanings of 'final order' and 'provisional order' for these purposes see PARA 179 note 4 ante.

5 Railways Act 1993 s 57A(1)(b) (as added: see note 3 supra).

6 Ibid s 57A(1) (as added: see note 3 supra). However, no penalty may be imposed in respect of any contravention of a final or provisional order if provision was made in the order by virtue of s 55(7A) (as added and amended) (see PARA 180 ante) in relation to the contravention: s 57A(4) (as so added). No penalty may be imposed in respect of a contravention by a relevant operator by virtue of s 57A(1)(a) (as added) (see head (1) in the text):

127 (1) in a case where no final or provisional order has been made in relation to the contravention, unless a copy of the notice relating to the penalty under s 57C(1) (as added) (see PARA 184 post) is served on the relevant operator within two years of the time of the contravention (s 57D(1) (as so added)); or

128 (2) in a case where a final or provisional order has been made in relation to the contravention, unless a copy of the notice relating to the penalty under s 57C(1) (as added) is served on the relevant operator (s 57D(2) (as so added)): (a) within three months of the confirmation of the provisional order or the making of the final order (s 57D(2)(a) (as so added)); or (b) where the provisional order is not confirmed, within six months of the making of the provisional order (s 57D(2)(b) (as so added)).

No penalty may be imposed in respect of a contravention by a relevant operator by virtue of s 57A(1)(b) (as added) (see head (2) in the text) unless a copy of the notice relating to the penalty under s 57C(1) (as added) is served on the relevant operator within two years of the time of the contravention: s 57D(1) (as so added).

Without prejudice to the Railways Act 2005 s 44 (exclusion of liability for breach of statutory duty under Pt 4 (ss 22-45): see PARA 145 et seq ante), nothing in the Railways Act 1993 ss 55-57 (as amended) (see PARA 179 et seq ante) or in ss 57A-57F (as added and amended) or s 58 (as amended) (see PARA 179 ante) excludes the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement: s 55(9) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(1)).

7 Railways Act 1993 s 57A(2) (as added (see note 3 supra); amended by the Railways Act 2005 Sch 1 Pt 1 para 23(1), (2)). The text refers to any case other than the case of a penalty imposed by the Scottish Ministers: see the Railways Act 1993 s 57A(2) (as so added and amended). As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, ie the objectives at which he must aim when exercising (or deciding not to exercise) his functions under Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante. As to the Scottish Ministers generally see PARA 124 note 7 ante. As to the maintenance of a register by the Secretary of State giving the provisions of every penalty imposed by him pursuant to his powers of enforcement see PARA 37 ante.

8 Ibid s 57A(3) (as added: see note 3 supra). An order under s 57A(3) (as added) is not to be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament: s 57A(3) (as so added). As to the order so made see the Railways Act 1993 (Determination of Turnover) Order 2005, SI 2005/2185, arts 4-5.

If the whole or any part of a penalty is not paid by the date by which it is to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17 (as amended) (see CIVIL PROCEDURE vol 12 (2009) PARA 1149): Railways Act 1993 s 57E(1) (as so added).

9 Ie or the Scottish Ministers: see ibid s 57A(5) (as added and amended: see note 11 infra).

10 For the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante.

11 Railways Act 1993 s 57A(5) (as added (see note 3 supra); amended by the Railways Act 2005 Sch 1 Pt 1 para 23(1), (3)(a)). For the meaning of 'person under closure restrictions' see PARA 179 note 1 ante.

12 For the meaning of 'notice' see PARA 34 note 4 ante. As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by the Railways Act 1993 s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (as amended): see PARA 33 ante. As to the maintenance of a register by the Office of Rail Regulation giving the provisions of every penalty imposed by it pursuant to its powers of enforcement see PARA 56 ante.

13 Ibid s 57A(5)(a) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt I paras 1, 3(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 23(1), (3)(b)). As to proceedings under the Competition Act 1998 see PARA 186 et seq post.

14 Railways Act 1993 s 57A(5)(b) (as added: see note 3 supra).

15 Ibid s 57A(5)(c) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3(a), (b); and the Railways Act 2005 Sch 1 Pt 1 para 23(1), (3)(c)).

16 Railways Act 1993 s 57A(6) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3(a), (b)).

17 Railways Act 1993 s 57B(1) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 24(1)(a)). As to the policy so published see *Economic enforcement policy and penalties statement* (April 2006), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>). The fact that a statement of policy has not been published by the Secretary of State or by the Office of Rail Regulation under the Railways Act 1993 s 57B (as added and amended) does not affect:

- 129 (1) the validity of any decision to impose a penalty under s 57A (as added and amended) (see the text and notes 1-16 supra) (Railways Act 2005 Sch 1 para 24(2)(a));
- 130 (2) any determination of the amount of any such penalty (Sch 1 para 24(2)(b));
- 131 (3) the inclusion in a final or provisional order of any requirement to pay a sum (Sch 1 para 24(2)(c)); or
- 132 (4) any determination of the amount of the sum payable in accordance with such an order (Sch 1 para 24(2)(d)).

In relation to the application of Sch 1 para 24(2), with modifications, for the purposes of Statements of National Regulatory Provisions (SNRPs) under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (as to which see PARAS 31, 93 et seq ante), see reg 14, Sch 3 Pt 1 para 1(h).

The Secretary of State and the Office of Rail Regulation may at any time alter or replace a statement of his or its policy and must publish the altered or replacement statement: Railways Act 1993 s 57B(4) (as so added; amended by the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3(a), 13(b), Sch 8; and the Railways Act 2005 Sch 1 Pt 1 para 24(1)(a), (b)). However, the Secretary of State and the Office of Rail Regulation must undertake appropriate consultation when preparing, altering or replacing a statement of policy: Railways Act 1993 s 57B(5) (as so added; amended by the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 24(1)(a)).

The requirement to prepare and publish a statement of policy under the Railways Act 1993 s 57B (as added and amended) applies in relation to sums required to be paid by virtue of s 55(7A) (as added and amended) (see PARA 180 ante) as it applies to penalties, but as if: (a) references to the imposition of penalties were to the inclusion in an order of a requirement to pay a sum (s 57B(7)(a) (as so added)); (b) references to relevant conditions or requirements were omitted (s 57B(7)(b) (as so added)); and (c) the reference in head (ii) in the text to anything which has been or is being done or omitted to be done included a reference to anything which is likely to be done or omitted to be done (s 57B(7)(c) (as so added)).

18 Ibid s 57B(2) (as added: see note 3 supra).

19 Ibid s 57B(2)(a) (as added: see note 3 supra).

20 Ibid s 57B(2)(b) (as added: see note 3 supra).

21 Ibid s 57B(2)(c) (as added: see note 3 supra).

22 Ibid s 57B(3) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 s 118, Sch 2 Pt I paras 1, 3(a), Sch 8; and the Railways Act 2005 Sch 1 Pt 1 para 24(1)(a), (b)).

23 Railways Act 1993 s 57B(6) (as added (see note 3 supra); amended by the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3(a); and the Railways Act 2005 Sch 1 Pt 1 para 24(1)(a)).

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184. Procedural requirements for penalties.

Before it imposes a penalty on a relevant operator¹, the appropriate authority² must give notice³:

- 670 (1) stating that it proposes to impose a penalty on the relevant operator and the amount of the penalty proposed⁴;
- 671 (2) setting out the relevant condition or requirement⁵ or order in question⁶;
- 672 (3) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of a penalty and the amount of the penalty proposed⁷;
- 673 (4) specifying the manner in which, and place at which, it is proposed to require the penalty to be paid⁸; and
- 674 (5) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made⁹.

The appropriate authority must consider any representations or objections which are duly made and not withdrawn¹⁰; and must not modify a proposal to impose a penalty except¹¹:

- 675 (a) with the consent of the relevant operator¹²;
- 676 (b) where the modifications consist of a reduction of the amount of the penalty or a deferral of the date by which it is to be paid¹³; or
- 677 (c) after complying with specified requirements¹⁴, namely that the appropriate authority must¹⁵: (i) give to the relevant operator such notice as appears to it requisite of its modified proposal¹⁶; (ii) unless the proposed modifications are trivial, in that notice specify a period (not being less than seven days from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made¹⁷; and (iii) consider any representations or objections which are duly made and not withdrawn¹⁸.

As soon as practicable after imposing a penalty, the appropriate authority must give notice¹⁹:

- 678 (A) stating that it has imposed a penalty on the relevant operator and its amount²⁰;
- 679 (B) setting out the relevant condition or requirement or order in question²¹;
- 680 (C) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of the penalty and its amount²²;
- 681 (D) specifying the manner in which, and place at which, the penalty is to be paid²³; and
- 682 (E) specifying the date (not being less than 14 days from the date of publication of the notice) by which the penalty is to be paid²⁴.

Such a notice must be given by publishing the notice in such manner as the appropriate authority considers appropriate²⁵ and by serving a copy of the notice on the relevant operator²⁶.

If the whole or any part of a penalty is not paid by the date by which it is to be paid, the unpaid balance from time to time must carry interest²⁷.

1 For the meaning of 'relevant operator' for these purposes see PARA 179 note 2 ante.

2 For the meaning of 'appropriate authority' for these purposes see PARA 179 note 1 ante. As to things done under or for the purposes of any provision of the Railways Act 1993 ss 55-58 (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1(1), Sch 1 para 26. As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

3 Railways Act 1993 s 57C(1) (ss 57C, 57E added by the Transport Act 2000 s 225(1)). A notice under the Railways Act 1993 s 57C(1) (as added) must be given by publishing the notice in such manner as the appropriate authority considers appropriate and by serving a copy of the notice on the relevant operator: s 57C(2) (as so added). Where the Office of Rail Regulation serves a copy of such a notice on a licence holder, it must also serve a copy on the Secretary of State: s 57C(3) (as so added; amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a), (b); and the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 25). For the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante; for the meaning of 'notice' see PARA 34 note 4 ante. As to the Secretary of State see PARA 35 ante; and as to the Office of Rail Regulation see PARA 49 et seq ante. Both the Office of Rail Regulation and the Secretary of State have general duties imposed on them by the Railways Act 1993 s 4 (as amended), being the objectives at which they must aim when exercising, or deciding not to exercise, their functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. As to the maintenance of registers by both the Secretary of State and the Office of Rail Regulation giving the provisions of every penalty imposed by him or by it pursuant to their powers of enforcement see PARAS 37, 56 ante.

The Railways Act 1993 ss 57A-57F (as added and amended) bind the Crown: s 150(1)(b) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (3)). See further PARA 29 note 13 ante. In relation to the application of the Railways Act 1993 ss 57A-57F (as added and amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(c); and PARA 98 note 5 ante.

4 Railways Act 1993 s 57C(1)(a) (as added: see note 3 supra).

5 For the meaning of 'relevant condition or requirement' for these purposes see PARA 179 note 3 ante.

6 Railways Act 1993 s 57C(1)(b) (as added: see note 3 supra).

Without prejudice to the Railways Act 2005 s 44 (exclusion of liability for breach of statutory duty under Pt 4 (ss 22-45): see PARA 145 et seq ante), nothing in the Railways Act 1993 ss 55-57 (as amended) (see PARA 179 et seq ante) or in ss 57A-57F (as added and amended) or s 58 (as amended) (see PARA 179 ante) excludes the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement: s 55(9) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(1)).

7 Railways Act 1993 s 57C(1)(c) (as added: see note 3 supra).

8 Ibid s 57C(1)(d) (as added: see note 3 supra).

9 Ibid s 57C(1)(e) (as added: see note 3 supra).

10 Ibid s 57C(1) (as added: see note 3 supra).

11 Ibid s 57C(4) (as added: see note 3 supra).

12 Ibid s 57C(4)(a) (as added: see note 3 supra). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

13 Ibid s 57C(4)(b) (as added: see note 3 supra).

14 Ibid s 57C(4)(c) (as added: see note 3 supra).

15 Ibid s 57C(5) (as added: see note 3 supra).

16 Ibid s 57C(5)(a) (as added: see note 3 supra).

17 Ibid s 57C(5)(b) (as added: see note 3 supra).

18 Ibid s 57C(5)(c) (as added: see note 3 supra).

19 Ibid s 57C(6) (as added: see note 3 supra).

20 Ibid s 57C(6)(a) (as added: see note 3 supra).

21 Ibid s 57C(6)(b) (as added: see note 3 supra).

22 Ibid s 57C(6)(c) (as added: see note 3 supra).

23 Ibid s 57C(6)(d) (as added: see note 3 supra).

24 Ibid s 57C(6)(e) (as added: see note 3 supra).

25 Ibid s 57C(7)(a) (as added: see note 3 supra).

26 Ibid s 57C(7)(b) (as added: see note 3 supra). The relevant operator may, within 21 days of the date of service on him of the notice under s 57C(6) (as added) (see the text and notes 19-24 supra) make an application to the appropriate authority for it to specify different dates by which different portions of the penalty are to be paid: s 57C(8) (as so added). If an application is made under s 57C(8) (as added) in relation to a penalty, the penalty need not be paid until the application has been determined: s 57E(2) (as so added). If the appropriate authority grants an application under s 57C(8) (as added) in relation to a penalty, but any portion of the penalty is not paid by the date specified in relation to it by the appropriate authority under s 57C(8) (as added), so much of the penalty as has not already been paid is to be paid immediately: s 57E(3) (as so added). If a relevant operator is aggrieved by a penalty, or by the refusal of an application made under s 57C(8) (as added), he may question its validity on certain limited grounds: see PARA 185 post.

27 Ibid s 57E(1) (as added: see note 3 supra). The text refers to the unpaid balance from time to time carrying interest at the rate for the time being specified in the Judgments Act 1838 s 17 (as amended) (see CIVIL PROCEDURE vol 12 (2009) PARA 1149): Railways Act 1993 s 57E(1) (as so added).

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185. Validity and effect of penalties.

If the relevant operator¹ to whom a penalty notice relates² is aggrieved by a penalty and desires to question its validity³:

- 683 (1) on the ground that it was not within the appropriate authority's⁴ powers of provision relating to penalties⁵;
- 684 (2) on the ground that any of the procedural requirements for penalties⁶ have not been complied with in relation to it and his interests have been substantially prejudiced by the non-compliance⁷; or
- 685 (3) on the ground that it was unreasonable of the appropriate authority not to grant an application⁸ for it to specify different dates by which different portions of the penalty may be paid⁹,

he may make an application to the court¹⁰. Such an application must be made, where it is on the ground mentioned in head (3) above, within 42 days from the date on which the person is notified of the decision not to grant the application¹¹ and, in any other case, within 42 days from the date of service on him of the penalty notice¹². If an application is so made in relation to a penalty, the penalty need not be paid until the application has been determined¹³.

On such an application, made on the ground mentioned in either head (1) or head (2) above, the court, if satisfied that the ground is established, may quash the penalty or (instead of quashing it) make provision¹⁴:

- 686 (a) substituting a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case¹⁵; and/or
- 687 (b) substituting as the date by which the penalty, or any portion of the penalty, is to be paid a date later than that specified in the notice¹⁶.

On such an application, made on the ground mentioned in head (3) above, the court, if satisfied that the ground is established, may specify different dates by which different portions of the penalty are to be paid¹⁷. Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it determines; and where it specifies as the date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application it may require the payment of interest on the penalty, or portion, from that date at such rate as it determines¹⁸.

1 For the meaning of 'relevant operator' for these purposes see PARA 179 note 2 ante.

2 As to penalty notices see PARA 184 ante.

3 Railways Act 1993 s 57F(1) (s 57F added by the Transport Act 2000 s 225(1); the Railways Act 1993 s 57F(1) amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 8). Except as provided by the Railways Act 1993 s 57F (as added and amended), the validity of a penalty must not be questioned by any legal proceedings whatever: s 57F(8) (as so added).

Without prejudice to the Railways Act 2005 s 44 (exclusion of liability for breach of statutory duty under Pt 4 (ss 22-45): see PARA 145 et seq ante), nothing in the Railways Act 1993 ss 55-57 (as amended) (see PARA 180 et seq

ante) or in ss 57A-57F (as added and amended) or s 58 (as amended) (see PARA 179 ante) excludes the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement: s 55(9) (amended by the Railways Act 2005 s 54(4), Sch 11 paras 1, 7(1)).

The Railways Act 1993 ss 57A-57F (as added and amended) bind the Crown: s 150(1)(b) (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 42(1), (3)). See further PARA 29 note 13 ante. In relation to the application of the Railways Act 1993 ss 57A-57F (as added and amended) with modifications, in relation to Statements of National Regulatory Provisions (SNRPs) or SNRP holders, see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 1 para 1(c); and PARA 98 note 5 ante.

4 For the meaning of 'appropriate authority' for these purposes see PARA 179 note 1 ante. As to things done under or for the purposes of any provision of the Railways Act 1993 ss 55-58 (as amended) so far as they were done by or in relation to the Strategic Rail Authority as the appropriate authority see the Railways Act 2005 s 1(1), Sch 1 para 26. As to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

5 Railways Act 1993 s 57F(1)(a) (as added: see note 3 supra). The text refers to the powers of s 57A (as added and amended) (see PARA 183 ante): see s 57F(1)(a) (as so added).

6 Ie any of the requirements of ibid s 57C (as added and amended) (see PARA 184 ante): see s 57F(1)(b) (as added: see note 3 supra).

7 Ibid s 57F(1)(b) (as added: see note 3 supra).

8 Ie under ibid s 57C(8) (as added) (see PARA 184 ante): see s 57F(1)(c) (as added: see note 3 supra).

9 Ibid s 57F(1)(c) (as added: see note 3 supra). For these purposes, 'court' means the High Court: see s 57(9) (amended by the Transport Act 2000 Sch 27 paras 17, 32(1), (4)).

10 Railways Act 1993 s 57F(1) (as added: see note 3 supra).

11 Ibid s 57F(2)(a) (as added: see note 3 supra). The text refers to the application made under s 57C(8) (as added) (see PARA 184 ante): see s 57F(2)(a) (as so added).

12 Ibid s 57F(2)(b) (as added: see note 3 supra). The text refers to the date of service of the notice under s 57C(6) (as added) (see PARA 184 ante): see s 57F(2)(b) (as so added).

13 Ibid s 57F(3) (as added: see note 3 supra).

14 Ibid s 57F(4) (as added: see note 3 supra).

15 Ibid s 57F(5)(a) (as added: see note 3 supra).

16 Ibid s 57F(5)(b) (as added: see note 3 supra). The text refers to the date specified in the notice under s 57C(6) (as added) (see PARA 184 ante): see s 57F(5)(b) (as so added).

17 Ibid s 57F(6) (as added: see note 3 supra).

18 Ibid s 57F(7) (as added: see note 3 supra).

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D. COMPETITION IN THE RAIL SECTOR

186. Concurrent function of enforcing competition law in the rail sector.

Certain functions of the Office of Fair Trading (OFT)¹ under Part 4 of the Enterprise Act 2002², so far as relating to the supply of services relating to railways³, are concurrent functions of the Office of Rail Regulation⁴ and the OFT⁵.

The Office of Rail Regulation also is entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998⁶ in connection with: (1) agreements, decisions or concerted practices which may affect trade within the United Kingdom⁷ and which have as their object or effect the prevention, restriction or distortion of competition⁸; and (2) conduct amounting to abuse of a dominant market position⁹, so far as they relate to the supply of services relating to railways¹⁰.

1 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

2 I.e. the functions of the OFT under the Enterprise Act 2002 Pt 4 (ss 131-184) (as amended), other than s 166 (register of undertakings and orders) and s 171 (advice and information): see the Railways Act 1993 s 67(2A) (s 67(2A), (2B) added by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 21(1), (2)). As to the Enterprise Act 2002 Pt 4 (as amended) see COMPETITION.

3 For these purposes, 'services relating to railways' means railway services, the provision or maintenance of rolling stock, the development, maintenance or renewal of a network, station or light maintenance depot and the development, provision or maintenance of information systems designed wholly or mainly for facilitating the provision of railway services: Railways Act 1993 s 67(3ZA) (s 67(3ZA), (3ZB) added by the Transport Act 2000 s 243(1), (3); the Railways Act 1993 s 67(3ZA) amended by the Enterprise Act 2002 Sch 9 Pt 2 para 21(1), (3)). The Secretary of State may by order amend the Railways Act 1993 s 67(3ZA) (as added and amended); but such an order may not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament: s 67(3ZB) (as so added). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; for the meaning of 'network' see PARA 82 note 8 ante; for the meaning of 'rolling stock' see PARA 82 note 2 ante; and for the meaning of 'station' see PARA 82 note 5 ante. As to the Secretary of State see PARA 35 ante.

4 As to the Office of Rail Regulation see PARA 49 et seq ante. The Office of Rail Regulation has general duties imposed on it by *ibid* s 4 (as amended), being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under Pt I (ss 4-83) (as amended): see PARA 33 ante. However, s 4(1)-(6) (as amended) (see PARA 33 ante) does not apply in relation to anything done by the Office of Rail Regulation in the exercise of functions assigned to it by s 67(3) (as substituted and amended) ('Competition Act functions') (see the text and notes 6-10 *infra*): see s 4(7A) (as added and amended); and PARA 33 ante. The Office of Rail Regulation may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of s 4(1)-(6) (as amended), if it is a matter to which the OFT could have regard when exercising that function: see s 4(7B) (as added and amended); and PARA 33 ante.

5 *Ibid* s 67(2), (2A) (s 67(2) substituted by the Enterprise Act 2002 Sch 9 Pt 2 para 21(1), (2); the Railways Act 1993 s 67(2) amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 1993 s 67(2A) as added (see note 2 *supra*)). In consequence of the provision made for the concurrent exercise of functions, references to the OFT are to be construed accordingly: see s 67(2B) (as added: see note 2 *supra*). Further provision for the concurrent exercise of functions for these purposes is made by s 67(4)-(9) (amended by the Deregulation and Contracting Out Act 1994 ss 7(2), 12(7), 81, Sch 2 para 13, Sch 4 para 4, Sch 17; the Competition Act 1998 ss 54(2), 74(3), Sch 10 para 6(7), (8), Sch 14 Pt I; the Enterprise Act 2002 s 278(1), (2), Sch 9 Pt 2 para 21(1), (4), (5)(a), (b), (6)(a)-(c), (7), Sch 25 para 30(1), (9)(b), Sch 26; the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a), (c); the Railways Act 2005 s 59(6), Sch 13 Pt 1; the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b); the Enterprise Act 2002 (Consequential and Supplemental Provisions) Order

2003, SI 2003/1398, art 2, Schedule para 21(1), (3); and the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2 para 6(1), (2)(c)).

6 le the Competition Act 1998 Pt 1 (ss 1-60) (as amended), other than s 31D(1)-(6) (as added) (guidance), s 38(1)-(6) (as amended) (appropriate level of penalty) and s 51 (as amended) (procedural rules) (see COMPETITION vol 18 (2009) PARA 115 et seq): see the Railways Act 1993 s 67(3) (as substituted and amended: see note 10 infra).

7 For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

8 le of the kind mentioned in the Competition Act 1998 s 2(1) (see COMPETITION vol 18 (2009) PARA 116) or in the Treaty Establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 81 (art 81 formerly art 85; renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1): see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) (see COMPETITION vol 18 (2009) PARA 24 et seq): see the Railways Act 1993 s 67(3) (as substituted and amended: see note 10 infra).

9 le of the kind mentioned in the Competition Act 1998 18(1) (see COMPETITION vol 18 (2009) PARA 125) or in the EC Treaty art 82 (art 82 formerly art 86; renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1): see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) (see COMPETITION vol 18 (2009) PARA 24 et seq): see the Railways Act 1993 s 67(3) (as substituted and amended: see note 10 infra).

10 Ibid s 67(3) (substituted by the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, SI 2004/1261, Sch 2 para 6(1), (2)(a); the Railways Act 1993 s 67(3) amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). In consequence of the provision made for the concurrent exercise of functions, references to the OFT are to be construed accordingly: see the Railways Act 1993 s 67(3A) (added by the Competition Act 1998 Sch 10 para 6(5); the Railways Act 1993 s 67(3A) amended by the Enterprise Act 2002 Sch 25 para 30(1), (9)(b); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, SI 2004/1261, Sch 2 para 6(1), (2)(b)). Further provision for the concurrent exercise of functions for these purposes is made by the Railways Act 1993 s 67(8) (amended by the Deregulation and Contracting Out Act 1994 Sch 2 para 13, Sch 4 para 4, Sch 17; the Competition Act 1998 Sch 10 para 6(8); the Enterprise Act 2002 ss 168(9), 278(2), Sch 9 Pt 2 para 21(1), (6)(a)-(c), Sch 25 para 30(1), (9)(b); the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); and the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2 para 6(1), (2)(c)).

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(vii) Railway Companies and Insolvency

A. PROTECTED RAILWAY COMPANIES AND RAILWAY ADMINISTRATION ORDERS, ETC

187. Meaning and effect of railway administration order.

A 'railway administration order' is an order of the court made¹ in relation to a protected railway company² and directing that, during the period for which the order is in force, the affairs, business and property³ of the company are to be managed, by a person appointed by the court⁴: (1) for the achievement of the purposes of such an order⁵; and (2) in a manner which protects the respective interests of the members and creditors of the company⁶.

The purposes of a railway administration order made in relation to any company are:

- 688 (a) the transfer to another company, or (as respects different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the relevant activities⁷ may be properly carried on⁸; and
- 689 (b) the carrying on of those relevant activities pending the making of the transfer⁹.

Provision is made for applying provisions of the Insolvency Act 1986 where a railway administration order is made¹⁰; and with respect to cases in which, in pursuance of a railway administration order, another company is to carry on all or any of the relevant activities of a protected railway company in place of that company¹¹.

1 In accordance with the Railways Act 1993 ss 60-62 (as amended): see PARAS 188, 189 post. The Railways Act 1993 ss 59-62 (as amended) bind the Crown: s 150(1)(c).

2 For the purposes of *ibid* Pt I (ss 4-83) (as amended), 'protected railway company' means a company which is both a private sector operator and the holder of: (1) a passenger licence or a European licence which authorises the carriage of passengers by railway (or both); or (2) a network licence, a station licence or a light maintenance depot licence: ss 59(6)(a), 83(1) (s 59(6)(a) amended by the Railways Act 2005 s 59(6), Sch 13 Pt 1; and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, SI 2005/3050, reg 3, Sch 1 Pt 1 para 3(1), (5)). For these purposes, 'private sector operator' means any body or person other than a public sector operator: Railways Act 1993 s 83(1). For the meaning of 'public sector operator' see PARA 132 ante. For the meaning of 'European licence' see PARA 92 note 2 ante; for the meanings of 'licence' and 'licence holder' see PARA 83 note 6 ante; for the meanings of 'light maintenance depot licence', 'network licence', 'passenger licence' and 'station licence' see PARA 83 note 9 ante; and for the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 ante. As to licences issued under the Railways Act 1993 see PARA 83 ante.

For the purposes of the railway administration order provisions of the Railways Act 1993, 'company' means: (a) any company formed and registered under the Companies Act 1985 or any existing company within the meaning given in the Companies Act 1985 s 735(1) (see further COMPANIES vol 14 (2009) PARA 1); and (b) any unregistered company; and 'unregistered company' has the meaning given in the Insolvency Act 1986 Pt V (ss 220-229) (as amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1147 et seq): see the Railways Act 1993 s 65(1), (7). The 'railway administration order provisions of the Railways Act 1993' means ss 59-64, Schs 6-7 (as amended): see s 65(7).

3 For these purposes, 'business' and 'property' have the same meaning as they have in the Insolvency Act 1986 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 83; COMPANIES vol 15 (2009) PARA 1337): Railways Act 1993 s 59(7). In the application of s 59(1) in a case where the protected railway company there mentioned is a foreign company, the reference to the affairs, business and property of the company is to be taken as a reference to the affairs and business of the company, so far as carried on in Great Britain, and the property of the company within Great Britain: s 65(2). In s 65, 'foreign company' means a company incorporated outside Great Britain: see s 65(7). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

4 Ibid s 59(1). For these purposes, 'the court', in the case of any protected railway company, means the court having jurisdiction to wind up the company: s 59(7).

5 Ibid s 59(1)(a).

6 Ibid s 59(1)(b).

7 For the purposes of ibid Pt I (as amended), the 'relevant activities', in relation to a protected railway company, are: (1) in the case of a company which is the holder of a passenger licence or a European licence which authorises the carriage of passengers by railway (or both), the carriage of passengers by railway; or (2) in the case of a company which is the holder of a network licence, a station licence or a light maintenance depot licence, the management of a network, a station or a light maintenance depot, according to the description of licence in question: s 59(6)(b) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, SI 2005/3050, Sch 1 Pt 1 para 3(1), (5)). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; for the meaning of 'network' see PARA 82 note 8 ante; and for the meaning of 'station' see PARA 82 note 5 ante.

8 Railways Act 1993 s 59(2)(a).

9 Ibid s 59(2)(b).

¹⁰ See ibid s 59(3), Sch 6 (amended by the Transport Act 2000 s 252, Sch 27 paras 17, 48; the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 18; and the Railways Act 2005 ss 49(4), (5), 59(6), Sch 13 Pt 1). See also the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 14, Sch 3 Pt 2 para 2; and PARA 98 note 5 ante.

Without prejudice to the Railways Act 1993 Sch 6 para 20 (general adaptations and saving), the power conferred by the Insolvency Act 1986 s 411 (as amended) (company insolvency rules: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1041) to make rules applies for the purpose of giving effect to the railway administration order provisions of the Railways Act 1993 as it applies for the purpose of giving effect to the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended), but taking any reference in that section to those Parts as a reference to those provisions: Railways Act 1993 s 59(5). As to the rules so made see the Railway Administration Order Rules 2001, SI 2001/3352 (amended by the Railways and Transport Safety Act 2003 Sch 3 para 4; SI 2002/1555; SI 2005/911; and SI 2006/680), which apply, with modifications, the relevant rules contained in the Insolvency Rules 1986, SI 1986/1925 (as amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1041 et seq); and see *Re Railtrack plc (in administration)* [2002] All ER (D) 38 (Oct); *Re Railtrack plc (in railway administration)* [2003] All ER (D) 300 (Jun); *Weir v Secretary of State for Transport* [2005] EWHC 2192 (Ch), [2005] All ER (D) 160 (Oct). As to the rights of administrators *vis-à-vis* the rail regulator see *Re Railtrack plc (in railway administration)*, *Winsor v Bloom* [2002] EWCA Civ 955, [2002] 4 All ER 435, [2002] 1 WLR 3002.

¹¹ See the Railways Act 1993 s 59(4), Sch 7 (amended by the Transport Act 2000 ss 215, 274, Sch 16 paras 8, 54(1), (5)(a)-(c), Sch 31 Pt IV; the Railways Act 2005 s 49(7)-(9); and the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, SI 2005/3050, Sch 1 Pt 1 para 3(1), (10)).

UPDATE

187 Meaning and effect of railway administration order

NOTE 2--In the railway administration order provisions of the Railways Act 1993, 'company' means (a) a company registered under the Companies Act 2006, or (b) an unregistered company; and 'unregistered company' means a company that is not registered under the Companies Act 2006: Railways Act 1993 s 65(1) (substituted by SI 2009/1941).

NOTE 4--'The court,' in relation to a protected railway company, means the court (a) having jurisdiction to wind up the company, or (b) that would have such jurisdiction

apart from the Insolvency Act 1986 ss 221(2) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1256) or 441(2) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 3); Railways Act 1993 s 59(7) (definition substituted by SI 2009/1941).

NOTE 10--Railways Act 1993 Sch 6 further amended: SI 2009/1941. SI 2001/3352 further amended: SI 2007/3224, SI 2009/2748.

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188. Railway administration orders made on special petition.

If, on an application relating to a protected railway company¹, the court² is satisfied that either or both of the following grounds is satisfied in relation to that protected railway company, namely³:

- 690 (1) that the company is or is likely to be unable to pay its debts⁴;
- 691 (2) that, in a case in which the Secretary of State⁵ has certified that it would be appropriate for him to petition for the winding up of the company⁶, it would be just and equitable for the company to be wound up⁷,

the court may make a railway administration order⁸ in relation to that company⁹.

1 For the meaning of 'protected railway company' see PARA 187 note 2 ante.

2 For the meaning of 'court' see PARA 187 note 4 ante; definition applied by the Railways Act 1993 s 60(7).

3 Ibid s 60(1) (amended by the Railways Act 2005 s 49(2)).

The Railways Act 1993 s 60 (as amended) binds the Crown: s 150(1)(c).

4 Ibid s 60(2)(a).

5 As to the Secretary of State see PARA 35 ante; and as to the general duties imposed on him by ibid s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (ss 4-83) (as amended) see PARA 33 ante.

6 Ie under the Insolvency Act 1986 s 124A (as added and amended) (petition by the Secretary of State following inspectors' report etc: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1148 et seq): see the Railways Act 1993 s 60(2)(b).

7 Railways Act 1993 s 60(2)(b).

8 As to railway administration orders see PARA 187 ante.

9 Railways Act 1993 s 60(1) (as amended: see note 3 supra). An application under s 60(1) (as amended) for the making of a railway administration order may be made only by the Secretary of State: see s 60(1A) (added by the Railways Act 2005 s 49(3)).

Certain provisions of the Insolvency Act 1986 are applied for the further purposes of the Railways Act 1993 s 60 (as amended): see s 60(3)-(6) (s 60(5) amended by the Transport Act 2000 s 252, Sch 27 paras 17, 34); and the Railways Act 1993 s 65(3), (4).

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189. Restriction on winding up protected railway company.

Where a petition for the winding up of a protected railway company¹ is presented by a person other than the Secretary of State², the court³ cannot make a winding-up order in relation to that company on that petition unless⁴: (1) notice of the petition has been served on the Secretary of State⁵; and (2) a period of at least 14 days has elapsed since the service of that notice⁶. Where a petition for the winding up of a protected railway company has been presented, the Secretary of State⁷ may, at any time before a winding-up order is made on the petition, make an application to the court for a railway administration order⁸ in relation to that company; and where such an application is made the court may, if it is satisfied the qualifying grounds apply⁹, make a railway administration order instead of a winding-up order¹⁰.

No resolution for voluntary winding up¹¹ may be passed by a protected railway company without permission of the court granted on an application made for the purpose by the company¹². No such permission may be granted unless: (a) notice of the application has been served on the Secretary of State¹³; and (b) a period of at least 14 days has elapsed since the service of that notice¹⁴. Where such an application for permission has been made by a protected railway company the Secretary of State¹⁵ may, at any time before permission has been granted¹⁶, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied the qualifying grounds apply¹⁷, make a railway administration order instead of granting leave¹⁸.

No administration order under Part II of the Insolvency Act 1986¹⁹ may be made in relation to a protected railway company unless²⁰: (i) notice of the application for the order has been served on the Secretary of State²¹; and (ii) a period of at least 14 days has elapsed since the service of that notice²². Where an application for an administration order under Part II of the Insolvency Act 1986 has been made in the case of a protected railway company the Secretary of State²³ may, at any time before such an order has been made on that application, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied the qualifying grounds²⁴ apply, make a railway administration order instead of an administration order under Part II of the Insolvency Act 1986²⁵.

No step is to be taken by any person to enforce any security over a protected railway company's property²⁶, except where that person has served 14 days' notice of his intention to take that step on the Secretary of State²⁷.

1 For the meaning of 'protected railway company' see PARA 187 note 2 ante.

2 As to the Secretary of State see PARA 35 ante; and as to the general duties imposed on him by the Railways Act 1993 s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (ss 4-83) (as amended) see PARA 33 ante.

3 For the meaning of 'court' see PARA 187 note 4 ante; definition applied by ibid ss 61(4), 62(8).

4 Ibid s 61(1). The Railways Act 1993 ss 61-62 (as amended) bind the Crown: s 150(1)(c).

5 Ibid s 61(1)(a) (amended by the Railways Act 2005 ss 1(1), 49(4)(a), 59(6), Sch 1 Pt 1 para 27(1)(a), Sch 13 Pt 1). The reference in the text is to the 'appropriate national authority' which for these purposes, in relation to any protected railway company (other than a Scottish such company) or a company subject to a railway

administration order (other than a Scottish such company), means the Secretary of State: see the Railways Act 1993 ss 59(6)(za), 61(1)(a) (s 59(6)(za) added by the Railways Act 2005 s 49(1)(a); the Railways Act 1993 s 61(1)(a) amended by the Railways Act 2005 s 49(4)(a), Sch 1 Pt 1 para 27(1)(a), Sch 13 Pt 1).

6 Railways Act 1993 s 61(1)(b).

7 le as the appropriate national authority (see note 5 supra): see *ibid* s 61(2) (as amended: see note 10 *infra*).

8 As to railway administration orders see PARA 187 *ante*.

9 le those grounds set out in the Railways Act 1993 s 60(1) (as amended) (see PARA 188 *ante*): see s 61(2) (as amended: see note 10 *infra*).

10 *Ibid* s 61(2) (amended by the Railways Act 2005 s 49(4)(a), Sch 1 Pt 1 para 27(1)(a), Sch 13 Pt 1).

The provisions of the Insolvency Act 1986 that provide for powers on application for an administration order (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 154) are applied to a petition for the winding up of a protected railway company see the Railways Act 1993 s 61(3).

11 For these purposes, 'resolution for voluntary winding up' has the same meaning as in the Insolvency Act 1986 (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 939): s 62(8).

12 Railways Act 1993 s 62(1). The provisions of s 62(1)-(4) (as amended) do not have effect in relation to a protected railway company which is a foreign company: s 65(5). For the meaning of 'foreign company' see PARA 187 note 3 *ante*.

13 *Ibid* s 62(2)(a) (amended by the Railways Act 2005 s 49(4)(b), Sch 1 Pt 1 para 27(1)(b), Sch 13 Pt 1). As to the Secretary of State being the 'appropriate national authority' for these purposes see note 5 *supra*.

14 Railways Act 1993 s 62(2)(b).

15 le as the appropriate national authority (see note 5 *supra*): see *ibid* s 62(3) (as amended: see note 18 *infra*).

16 le granted under *ibid* s 62(1) (see the text and notes 11-12 *supra*): see s 62(3) (as amended: see note 18 *infra*).

17 le those grounds set out in *ibid* s 60(1) (as amended) (see PARA 188 *ante*): see s 62(3) (as amended: see note 18 *infra*).

18 *Ibid* s 62(3) (amended by the Railways Act 2005 s 49(4)(b), Sch 1 Pt 1 para 27(1)(b), Sch 13 Pt 1).

The provisions of the Insolvency Act 1986 that provide for powers on application for an administration order (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 154) are applied to a petition for the winding up of a protected railway company: see the Railways Act 1993 s 62(4).

19 le the Insolvency Act 1986 s 8 (as substituted) (administration: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 146 *et seq*): see the Railways Act 1993 s 62(5).

20 *Ibid* s 62(5).

21 *Ibid* s 62(5)(a) (amended by the Railways Act 2005 s 49(4)(b), Sch 1 Pt 1 para 27(1)(b), Sch 13 Pt 1). As to the Secretary of State being the 'appropriate national authority' for these purposes see note 5 *supra*.

22 Railways Act 1993 s 62(5)(b).

23 le as the appropriate national authority (see note 5 *supra*): see *ibid* s 62(6) (as amended: see note 25 *infra*).

24 le those grounds set out in *ibid* s 60(1) (as amended) (see PARA 188 *ante*): see s 62(6) (as amended: see note 25 *infra*).

25 Railways Act 1993 s 62(6) (amended by the Railways Act 2005 s 49(4)(b), Sch 1 Pt 1 para 27(1)(b), Sch 13 Pt 1).

26 For these purposes, 'security' and 'property' have the same meaning as in the Insolvency Act 1986 (see COMPANIES vol 15 (2009) PARA 1337; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 109): Railways Act 1993 s 62(8).

27 Ibid s 62(7) (amended by the Railways Act 2005 s 49(4)(b), Sch 1 Pt 1 para 27(1)(b), Sch 13 Pt 1). As to the Secretary of State being the 'appropriate national authority' for these purposes see note 5 supra.

In the application of the Railways Act 1993 s 62(7) (as amended) where the protected railway company there mentioned is a foreign company, the reference to the company's property is to be taken as a reference to such of its property as is for the time being situated in Great Britain: s 65(6). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

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190. Government financial assistance where railway administration orders made.

Where a railway administration order¹ is for the time being in force in relation to a company², the Secretary of State³ may, with the consent of the Treasury⁴:

- 692 (1) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order⁵;
- 693 (2) agree to indemnify a relevant person⁶ in respect of liabilities incurred by that person in connection with the carrying out by the railway administrator of his functions under the order and in respect of loss or damage incurred by that person in that connection⁷.

The Secretary of State may, with the consent of the Treasury, guarantee the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by a company in relation to which a railway administration order is in force at the time when the guarantee is given⁸.

The terms and conditions on which a grant is made to any company under head (1) above may require the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms and conditions on which the grant is made; and any loans which the Secretary of State makes to a company under head (1) above must be repaid to him at such times and by such methods, and interest on the loans must be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct⁹.

If sums are paid by the Secretary of State in consequence of an indemnity agreed to under head (2) above in the case of a company in relation to which a railway administration order is in force, the company must pay him such amounts in or towards the repayment to him of those sums as he may direct and interest, at such rates as he may direct, on amounts outstanding¹⁰. Such payments to the Secretary of State must be made at such times and in such manner as he may determine¹¹.

In relation to any such guarantees given by the Secretary of State¹², immediately after such a guarantee is given, the Secretary of State must lay a statement of the guarantee before each House of Parliament¹³. Where any sum is paid out for fulfilling such a guarantee, the Secretary of State must, as soon as possible after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of the interest thereon is finally discharged), lay before each House of Parliament a statement relating to that sum¹⁴. Any sums required by the Secretary of State for fulfilling such a guarantee must be paid out of money provided by Parliament¹⁵. If any sums are paid out in fulfilment of such a guarantee, the relevant company¹⁶ must¹⁷ make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct¹⁸: (a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out¹⁹; and (b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out²⁰; and the consent of the Treasury is required for the giving of such a direction²¹.

1 As to railway administration orders see PARA 187 et seq ante.

2 le other than a Scottish protected company: see the Railways Act 1993 s 63(1) (as amended: see note 4 infra). For the meanings of 'company' and 'protected railway company' see PARA 187 note 2 ante.

3 As to the Secretary of State see PARA 35 ante; and as to the general duties imposed on him by the Railways Act 1993 s 4 (as amended), being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under Pt I (ss 4-83) (as amended) see PARA 33 ante.

4 Railways Act 1993 s 63(1) (amended by the Railways Act 2005 s 50(1)(a)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 Ibid s 63(1)(a). A grant, loan, indemnity or guarantee under s 63 (as amended) may be made or given in whatever manner, and on whatever terms and subject to whatever conditions, the Secretary of State considers appropriate: s 63(2A) (added by the Railways Act 2005 s 54(4), Sch 11 paras 1, 9(2)).

6 A person is a relevant person for the purposes of the Railways Act 1993 s 63 (as amended) if he is the railway administrator, an employee of the railway administrator, a member or employee of a firm of which the railway administrator is a member, a member or employee of a firm of which the railway administrator is an employee, a member of a firm of which the railway administrator was an employee or member at a time when the order was in force, a body corporate which is the employer of the railway administrator or an officer, employee or member of such a body corporate: s 63(3B) (s 63(3A)-(3C) added by the Railways Act 2005 Sch 11 paras 1, 9(3)). For these purposes, the references to the railway administrator, in relation to a railway administration order, are references to the person appointed to achieve the purposes of the order and, where two or more persons are so appointed, are to be construed as references to any one or more of them; and the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time: Railways Act 1993 s 63(3C) (as so added).

7 Ibid s 63(1)(b) (substituted by the Railways Act 2005 Sch 11 paras 1, 9(1)).

The power of the Secretary of State under the Railways Act 1993 s 63 (as amended) to agree to indemnify a relevant person is confined to a power to agree to indemnify that person in respect of liabilities, loss and damage incurred or sustained by him as a relevant person; but includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons: s 63(3A) (as added: see note 6 supra).

8 See ibid s 63(2) (amended by the Railways Act 2005 ss 50(1)(b), 59(6), Sch 13 Pt 1). The company in question must not be a Scottish protected company: see the Railways Act 1993 s 63(2) (as so amended).

9 Ibid s 63(3). Section 63(3) is without prejudice to any provision applied in relation to the company by s 59(3), Sch 6 (as amended) (see PARA 187 ante): see s 63(3). Any grant or loan made under s 63 (as amended) and any sums required to be paid by the Secretary of State in respect of an indemnity given under s 63 (as amended) are to be paid out of money provided by Parliament: s 63(4). Any sums received under s 63(3) by the Secretary of State are to be paid into the Consolidated Fund: s 63(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

10 Ibid s 63(4A) (s 63(4A)-(4D) added by the Railways Act 2005 Sch 11 paras 1, 9(4)). The consent of the Treasury is required for the giving of a direction under the Railways Act 1993 s 63(4A) (as added): s 63(4D) (as so added). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

The Railways Act 1993 s 63(4A) (as added) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company in relation to which the railway administration order in question was made: s 63(4C) (as so added).

11 Ibid s 63(4B) (as added: see note 10 supra). The consent of the Treasury is required for the making of a determination under s 63(4B) (as added): s 63(4D) (as so added).

12 le in relation to any guarantee given by the Secretary of State under ibid s 63 (as amended): see s 64(1).

13 See ibid s 64(2).

14 Ibid s 64(3).

15 Ibid s 64(4).

16 In ibid s 64(5), 'relevant company' in relation to a guarantee, means the company which borrowed the sums in respect of which the guarantee was given: s 64(7).

17 le without prejudice to any provision applied in relation to the relevant company by *ibid* Sch 6 (as amended) (see *PARA 187 ante*): see s 64(5).

18 *Ibid* s 64(5).

19 *Ibid* s 64(5)(a).

20 *Ibid* s 64(5)(b).

21 *Ibid* s 64(5). Any sums received by the Secretary of State under s 64(5) are to be paid into the Consolidated Fund: s 64(6).

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B. PROTECTION OF RAILWAY COMPANY ASSETS AGAINST EXECUTION, DISTRESS, ETC

191. Protection of plant.

After a railway or any part of a railway is open for public traffic¹, the rolling stock and plant used or provided by the railway company² for the purposes of the traffic on the railway or of the stations or workshops is not liable to be taken in execution, provided that the judgment from which execution issues is recovered in an action on a contract entered into since 20 August 1867³ or in an action not on a contract commenced since that date⁴. However, this provision does not restrict the right to levy execution against the property of a railway company not actually needed for the carrying on of its business⁵.

The statutory protection against execution has been extended to a statutory company that was primarily a dock company where the railway merely played an ancillary role in connecting the dock to an existing railway⁶.

Where the property of a railway company has been taken in execution and a question arises whether or not it is liable to be so taken, the question may be determined by summons and by summary proceedings in the court where the execution was ordered and any such determination is not subject to appeal⁷.

1 Once a railway has been opened for traffic, the protection from seizure continues even though the railway is subsequently closed: *Midland Waggon Co v Potteries, Shrewsbury and North Wales Rly Co* (1880) 6 QBD 36. However, in *Re Beddgelert Rly Co* (1871) 24 LT 122, where no part of an authorised railway was ever worked by a company although a part was opened, worked and maintained by another company, it was held that the railway had not been opened for traffic.

2 For the purposes of the Railway Companies Act 1867, the term 'company' means a 'railway company', that is to say, a company constituted by Act of Parliament, or by certificate under Act of Parliament, for the purpose of constructing, maintaining, or working a railway (either alone or in conjunction with any other purpose): see s 3. As to railway companies also see PARA 14 ante.

3 I.e. the date the Railway Companies Act 1867 received Royal Assent.

4 Ibid s 4 (amended by 38 & 39 Vict c 31 (Act to make Perpetual Section Four of the Railway Companies Act 1867, and Section Four of the Railway Companies (Scotland) Act 1867) (1875); and the Statute Law Revision Act 1893).

5 See *Re Hull and Hornsea Rly Co* (1866) LR 2 Eq 262; *Gardner v London, Chatham and Dover Rly Co, ex p Grissell* (1867) 2 Ch App 385; *Re Bristol and North Somerset Rly Co* (1869) 20 LT 70; *Re Calne Rly Co* (1870) LR 9 Eq 658; *Re Ogilvie* (1871) 7 Ch App 174; *Re Hull, Barnsley and West Riding Junction Rly Co* (1888) 40 ChD 119, CA. Where contractors constructed an extension railway authorised by a special Act of an existing railway undertaker, they were held to be entitled to a judgment operating against the existing railway since there was nothing in the special Act or the contract to limit the undertaker's liability to assets of the extension railway: see *S Pearson & Son Ltd v Dublin and South Eastern Rly Co* [1909] AC 217, HL. As to the establishment of railways by special Act see PARA 291 post.

6 *Great Northern Rly Co v Tahourdin* (1883) 13 QBD 320, CA. Where a company was authorised to make a short railway connecting the dock with the line of the railway company, it was held that the dock company was within the protection: *Re East and West India Dock Co* (1888) 38 ChD 576, CA.

7 Railway Companies Act 1867 s 5.

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192. Protection of rolling stock.

Until a day to be appointed, the following provisions have effect¹.

Where rolling stock² is in a work³, it is not liable to distress for rent⁴ payable by a tenant⁵ of the work provided that such rolling stock is not the tenant's actual property and that it has on it a distinguishing metal plate or other conspicuous brand or mark impressed or made upon it sufficiently indicating the actual owner⁶. If any such rolling stock is distrained, an order may be obtained from a magistrates' court against the landlord for its restoration or for payment of its value⁷.

However, a tenant's interest, if any, in rolling stock is not protected from distress and, if rolling stock is distrained, a magistrates' court, in the case of difference, may settle how the tenant's interest is to be disposed of⁸.

There is a right to appeal to the Crown Court from a decision of a magistrates' court under the Railway Rolling Stock Protection Act 1872⁹.

1 The Railway Rolling Stock Protection Act 1872 ceases to have effect by virtue of the Tribunals, Courts and Enforcement Act 2007 ss 86, 146, Sch 14 para 18, Sch 23 Pt 4 as from a day to be appointed under s 148(5). However, at the date at which this volume states the law, no such day had been appointed.

2 For these purposes, 'rolling stock' includes wagons, trucks, carriages of all kinds and locomotive engines used on railways: Railway Rolling Stock Protection Act 1872 s 2. See note 1 *supra*.

3 For these purposes, 'work' includes any colliery, quarry, mine, manufactory, warehouse, wharf, pier or jetty, in or on which is any railway siding: *ibid* s 2. See note 1 *supra*. See *Easton Estate and Mining Co v Western Waggon and Property Co* (1886) 54 LT 735, DC, where an engine found in a contractor's shed was held to be connected by siding to the railway.

4 For these purposes, 'rent' includes royalty or other reservation in the nature of rent: Railway Rolling Stock Protection Act 1872 s 2. See note 1 *supra*.

5 For these purposes, 'tenant' includes a lessee, sub-lessee, or other person having an interest in a work under a lease or agreement or by use and occupation or being otherwise liable to pay rent in respect of a work; and 'person' includes a body corporate: *ibid* s 2. See note 1 *supra*.

6 See *ibid* s 3. See note 1 *supra*. As to the protection of rolling stock from being taken in execution see PARA 191 *ante*.

7 See *ibid* ss 2, 4. See note 1 *supra*.

8 See *ibid* s 5. See note 1 *supra*.

9 See *ibid* s 6 (amended by the Summary Jurisdiction Act 1884 s 4 (repealed), Schedule; and the Courts Act 1971 s 56(2), Sch 9). See note 1 *supra*.

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193. Land conveyed in consideration of rent charge.

Subject to the statutory protection of rolling stock belonging to third persons¹, where land has been conveyed to a railway undertaker in consideration of a rentcharge and the undertaker defaults in payment, the court allows the owner to exercise powers of distress or re-entry reserved by the conveyance². However, distraint was not allowed where all the goods and chattels not necessary for carrying on the undertaking had been assigned to trustees for creditors³.

1 See the Railway Companies Act 1867 s 4 (as amended); and PARA 191 ante.

2 *Eyton v Denbigh, Ruthin and Corwen Rly Co* (1868) LR 6 Eq 14; *Forster v Manchester and Milford Rly Co, Re Manchester and Milford Rly Co* (1880) 49 LJ Ch 454.

3 *Eyton v Denbigh, Ruthin and Corwen Rly Co, Rickman v Johns* (1868) LR 6 Eq 488.

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(4) RAILWAY SAFETY AND SECURITY

(i) Health and Safety

A. HEALTH AND SAFETY REGIME

(A) APPLICATION OF HEALTH AND SAFETY LEGISLATION

194. Extension to railways of certain provisions relating to health and safety at work.

The provisions of Part I of the Health and Safety at Work etc Act 1974¹ have been extended² in relation to any railway³, tramway⁴ or trolley vehicle system⁵, or any transport system using any other mode of guided transport⁶.

If, to any extent they would not otherwise do so, the general purposes of Part I of the Health and Safety at Work etc Act 1974⁷ include: (1) securing the proper construction and safe operation of such transport systems, and of any locomotives, rolling stock or other vehicles used, or to be used, on those systems⁸; and (2) protecting the public (whether passengers or not) from personal injury and other risks arising from the construction and operation of such transport systems⁹.

1 I.e. the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303). Subject to certain exceptions, the Office of Rail Regulation is responsible for the enforcement of the general purposes of, and certain specific duties contained in, Pt I (as amended) to the extent to which they relate to the operation of a railway, tramway or any other system of guided transport: see PARA 195 post. As to the Office of Rail Regulation see PARA 49 et seq ante.

2 Thus *ibid* Pt I (as amended) has effect as if:

133 (1) certain provisions (see heads (a)-(m) *infra*) were existing statutory provisions within the meaning of Pt I (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302) (see the Railways Act 1993 s 117(1)(a)); and

134 (2) certain of those provisions (see heads (a)-(l) *infra*) were specified in the Health and Safety at Work etc Act 1974 s 1 (as amended), Sch 1 column 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302) (see the Railways Act 1993 s 117(1)(b)).

The provisions mentioned in heads (1) and (2) *supra* relate to the proper construction and safe operation of certain transport systems, and of the vehicles used on those systems, and the protection of railway employees or the general public from personal injury and other risks arising therefrom (see s 117(1)) and are:

135 (a) the Highway (Railway Crossings) Act 1839 (see PARAS 355, 405 post);

136 (b) the Railway Regulation Act 1842 s 9 (see PARA 355 post), s 10 (repealed);

137 (c) the Regulation of Railways Act 1868 s 22 (repealed);

138 (d) the Regulation of Railways Act 1871 (repealed);

139 (e) the Regulation of Railways Act 1889 ss 1, 4 (both repealed);

- 140 (f) the Railway Employment (Prevention of Accidents) Act 1900 (repealed);
- 141 (g) the Road and Rail Traffic Act 1933 s 42 (as amended) (see PARA 355 post);
- 142 (h) the British Transport Commission Act 1954 s 40 (as amended);
- 143 (i) the British Transport Commission Act 1957 s 66 (as amended);
- 144 (j) the Transport Act 1968 s 124 (repealed in relation to England and Wales), s 125 (repealed);
- 145 (k) the Level Crossings Act 1983 (see PARA 356 post);
- 146 (l) the Transport and Works Act 1992 ss 41-45 (ss 42-44 repealed) (see PARAS 208, 371 post);
- 147 (m) any regulations made under the European Communities Act 1972 s 2 (as amended) for the purpose of implementing Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) (as amended) (see PARA 30 et seq ante), so far as the regulations are made for safety purposes:

see the Railways Act 1993 s 117(4). Without prejudice to the generality of the Health and Safety at Work etc Act 1974 s 15(1) (as substituted and amended), (health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424), regulations made thereunder may:

- 148 (i) repeal or modify any of the provisions mentioned in heads (a)-(m) supra (Railways Act 1993 s 117(3)(a)); and
- 149 (ii) make any provision which, but for any such repeal or modification, could be made by regulations or orders made under any enactment there mentioned (s 117(3)(b)).

As to regulations so made see eg the Railway Safety Regulations 1999, SI 1999/2244 (as amended) (cited in PARA 205 et seq post); the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) (cited in PARA 267 et seq post); and the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended) (which also implement Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive') (OJ L164, 30.04.2004, p 44), which has the same Treaty basis as the Directive mentioned in head (m) supra: see PARA 30 ante) (cited in PARA 232 et seq post); and see note 9 infra.

Without prejudice to the Railways Act 1993 s 117, nothing in the Railways Act 1993, and nothing done under it, is to prejudice or affect the operation of any of the relevant statutory provisions (whenever made) as defined in the Health and Safety at Work etc Act 1974 Pt I (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302): Railways Act 1993 s 151(7), (8).

Subject to and in accordance with the Health and Safety at Work etc Act 1974 s 48 (application to Crown: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 304), the Railways Act 1993 s 117, other than s 117(5) (modification of the Transport and Works Act 1992), so far as affecting or relating to provisions of or regulations under the Health and Safety at Work etc Act 1974 Pt I (as amended) which bind the Crown, binds the Crown: Railways Act 1993 s 150(1)(e).

3 For the meaning of 'railway' see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 4 post), but disregarding for these purposes the condition as to the minimum gauge of the track; definition applied by the Railways Act 1993 s 117(7).

4 For the meaning of 'tramway' see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 4 post); definition applied by the Railways Act 1993 s 117(7).

5 For the meaning of 'trolley vehicle system' see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 6 post); definition applied by the Railways Act 1993 s 117(7). As to the meaning of 'vehicle' for these purposes see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 4 post); definition applied by the Railways Act 1993 s 117(7).

6 See *ibid* s 117(6). For the meaning of 'guided transport' see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 7 post); definition applied by the Railways Act 1993 s 117(7). The application of the general legislation relating to health and safety is supported by regulations which are specific to railways: see PARA 195 et seq post.

7 As to the general purposes of the Health and Safety at Work etc Act 1974 Pt I (as amended) see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303.

8 Railways Act 1993 s 117(2)(a). For the meanings of 'locomotive' and 'rolling stock', and as to the meaning of 'vehicle', see PARA 82 note 2 ante. See generally the requirements of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended); and PARA 231 et seq post.

9 Railways Act 1993 s 117(2)(b). Duties imposed under health and safety legislation which are of general application but which have implications for the rail industry include eg the Management of Health and Safety at Work Regulations 1999, SI 1999/3242 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 428-443); and the Construction (Design and Management) Regulations 2007, SI 2007/320, which implement in Great Britain the requirements of Directive 92/57/EEC of the EC Council (OJ No L245, 26.8.92, p 6) on the implementation of minimum safety and health requirements at temporary or mobile construction sites (see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 340 et seq). See also the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended); and PARA 274 post.

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(B) REGULATION OF HEALTH AND SAFETY ON THE RAILWAYS

(a) Enforcement of Health and Safety Legislation

195. Responsibility for the regulation and enforcement of health and safety on the railways.

The Office of Rail Regulation¹ is responsible for so much of the general purposes of Part 1 of the Health and Safety at Work etc Act 1974² as fall within the railway safety purposes³.

The Office of Rail Regulation is responsible⁴ also for the enforcement of the relevant statutory provisions under the Health and Safety at Work etc Act 1974⁵ to the extent that they relate to any of⁶: (1) the operation of a railway⁷; (2) the operation of a tramway⁸; and (3) the operation of any other system of guided transport⁹, whether or not that activity is the main activity carried out on premises¹⁰. The activities specified in heads (1) to (3) above do not include the operation of a cableway installation¹¹ or any fairground equipment¹² or the operation of a system of transport carried out on specified premises¹³ or activities which involve the undertaking of certain prohibited work¹⁴. The Office of Rail Regulation is also responsible, subject to certain qualifications, for the enforcement of the general duties of manufacturers and others as regards articles and substances for use at work under the Health and Safety at Work etc Act 1974¹⁵.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 I.e. the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303). As to the extension of the provisions of Pt I (as amended) for specified purposes in relation to railways etc see PARA 194 ante.

3 See PARA 196 et seq post. The Office of Rail Regulation has published '*ORR health and safety enforcement policy statement*' (October 2005), which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

Persons who provide railway services are subject to a railway safety levy in respect of activities undertaken by the Office of Rail Regulation under or by virtue of the Health and Safety at Work etc Act 1974 or in connection with the railway safety purposes: see PARA 202 post.

4 I.e. subject to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(3)-(5) (as amended): see reg 3(1). As to reg 3(3), (4) see the text and note 15 infra. Regulation 3(5) (as amended) provides that reg 3 (as amended) is subject to the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 93 (defence to contravention of provisions): Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(5) (amended by SI 2007/1573). The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3 (as amended) also has effect notwithstanding anything to the contrary in certain specified provisions of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 370): see the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(6).

5 As to the relevant statutory provisions see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

6 Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1). The activities referred to in heads (1) to (3) in the text are subject to the exceptions set out in regs 4-5 (see the text and notes 11-14 *infra*): see reg 3(2).

7 *Ibid* reg 3(2)(a). For these purposes, 'operation of a railway' includes, in particular:

- 150 (1) use, parking, sheltering, maintenance and repair of a vehicle including its inspection, cleaning, fuelling and preparation for use;
- 151 (2) subject to head (b) *infra*, loading or unloading of goods on or from vehicles at operational premises;
- 152 (3) ensuring the fitness of trains to enter into service, in particular, in the case of freight trains, by checking the condition and distribution of goods carried;
- 153 (4) use of the infrastructure;
- 154 (5) use of those fixed assets of the railway (other than infrastructure) which are both used in its operation and comprise, or are located within, operational premises;
- 155 (6) use of signalling control centres, or centres used for the operation of communications systems or systems used for monitoring the operation of the railway, whether or not within operational premises, together with any railway offices within the same premises;
- 156 (7) training of railway staff within operational premises or other premises included within head (6) *supra*;
- 157 (8) carrying out construction work to the extent stated in reg 5 (see note 14 *infra*); and
- 158 (9) reconstruction, renovation, refurbishment and repair of vehicles for use on a heritage railway carried out at premises used exclusively or primarily for these purposes and which form part of the heritage railway;

but does not include:

- 159 (a) subject to head (6) *supra*, office activities relating to the railway which are not carried out within operational premises; or
- 160 (b) loading or unloading of goods on or from vehicles at dock premises, intermodal depots or premises owned or operated by, or on behalf of, the Secretary of State for Defence;

reg 2. For the definition of terms used in heads (1) to (9) *supra* and in heads (a) and (b) *supra* see reg 2 (amended by SI 2007/320).

8 Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(2)(b). For these purposes, 'operation of a tramway' (and 'operation of any other system of guided transport') includes, in particular:

- 161 (1) use, parking, sheltering, maintenance and repair of vehicles including their inspection, cleaning, fuelling and preparation for use;
- 162 (2) ensuring the fitness of vehicles to enter into service;
- 163 (3) use of the infrastructure;
- 164 (4) use of those fixed assets of the system of transport (other than infrastructure) which are both used in its operation and comprise, or are located within, operational premises;
- 165 (5) use of signalling control centres, or centres used for the operation of communications systems or systems used for monitoring the operation of the system of transport, whether or not within operational premises, together with any offices of the system of transport within the same premises;
- 166 (6) training of staff within operational premises or other premises included within head (5) *supra*;
- 167 (7) carrying out construction work to the extent stated in reg 5 (see note 14 *infra*); and

- 168 (8) in the case of tramways, the reconstruction, renovation, refurbishment and repair of vehicles for use on a heritage tramway carried out at premises used exclusively or primarily for these purposes and which form part of the heritage tramway;

but, subject to head (5) supra, does not include office activities relating to the system of transport which are not carried out within operational premises: reg 2. For the definition of terms used in heads (1) to (8) supra see reg 2 (as amended: see note 7 supra).

9 Ibid reg 3(2)(c). For these purposes, 'guided transport' means a system of transport, used wholly or mainly for the carriage of passengers, employing vehicles: reg 2. As to the meaning of 'operation of any other system of guided transport' see note 8 supra. The systems of guided transport specified in head (3) in the text do not include a guided bus system, any other system of guided transport that employs vehicles which for some or all of the time when they are in operation travel along roads or a lift (unless it is used in the operation of any system of transport specified in heads (1) to (3) in the text): reg 4(2). For these purposes, 'guided bus system' means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation travel along roads and are guided (whether while on the road or at other times) by means of apparatus, a structure or other device which is fixed and not part of the bus or a guidance system which is automatic: reg 2.

10 Ibid reg 3(1).

11 Ibid reg 4(1)(a). For these purposes, 'cableway installation' means an installation made up of several components that:

- 169 (1) is used or intended to be used for the purpose of providing an operational system for carrying persons in vehicles, on chairs or by towing devices;
- 170 (2) uses cables positioned along the line of travel to provide suspension or traction or both; and
- 171 (3) is one of the following: (a) a cable car (including a gondola and chair lift) where the cabins or chairs are lifted or displaced by one or more carrier cables; (b) a drag lift, where users with appropriate equipment are dragged by means of a cable; or (c) a funicular railway or other installation with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables;

but does not include rack railways or cable operated tramways: reg 2. For the definition of terms used in heads (1) to (3) supra see reg 2 (as amended: see note 7 supra).

12 Ibid reg 4(1)(b).

13 See ibid reg 4(3). Notwithstanding reg 4(3), the Office of Rail Regulation is responsible for the enforcement of orders made under the Level Crossings Act 1983 s 1 (as amended) (see PARA 356 post) whether or not a level crossing to which such an order relates is within any premises referred to in the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 4(3): reg 4(4).

14 Ie the undertaking of any work which is prohibited by the Control of Asbestos Regulations 2006, SI 2006/2739 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 630 et seq) from being carried out by any employer or self-employed person without a licence granted under reg 8 relating to that work: Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 4(5) (amended by SI 2006/2739). Without prejudice to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 4(5) (as amended), the scope of operations referred to in reg 3(2) includes the carrying out of certain specified construction work: see reg 5 (amended by SI 2007/320).

15 The Office of Rail Regulation is responsible for the enforcement of the Health and Safety at Work etc Act 1974 s 6(1)-(2), (4)-(5) (s 6(1), (4) as substituted, s 6(2), (5) as amended) (general duties of manufacturers etc as regards articles and substances for use at work: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 531) but only in so far as their requirements relate to any:

- 172 (1) articles for use at work which are designed, manufactured, imported or supplied (Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(3)(a)); or

- 173 (2) substances which are manufactured, imported or supplied (reg 3(3)(b)),

to be used exclusively or primarily in the construction or operation of any system of transport specified in heads (1) to (3) in the text (reg 3(3)).

The Office of Rail Regulation is responsible for the enforcement of the Health and Safety at Work etc Act 1974 s 6(3) (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 531) but only in so far as its requirements relate to the erection or installation of any articles for use at work which are to be used in the operation of any system of transport specified in heads (1) to (3) in the text: Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(4).

UPDATE

195 Responsibility for the regulation and enforcement of health and safety on the railways

TEXT AND NOTES 11, 12--The activities specified in text heads (1) to (3) also do not include (1) a miniature railway which does not cross a carriageway, whether or not on the same level; or (2) a bus substitution service when outside operational premises: SI 2006/557 reg 4(1)(c), (d) (reg 2 amended, reg 4(1)(c), (d) added by SI 2008/2323). 'Miniature railway' means a system of transport employing parallel rails which provide support and guidance for vehicles carried on flanged wheels and from a track of a gauge of less than 350 millimetres; 'bus substitution service' means a service for the carriage of passengers by road that is provided as an alternative to the whole or a part of a railway or tramway passenger service that has been discontinued, reduced or modified, whether temporarily or permanently: SI 2006/557 reg 2 (as amended).

NOTE 13--SI 2006/557 reg 4(3) amended: SI 2008/2323.

NOTE 14--SI 2006/557 reg 5 substituted: SI 2008/2323.

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(b) The Office of Rail Regulation's Railway Safety Functions

196. Meaning of 'railway safety purposes'.

The 'railway safety purposes' means¹ so much of the general purposes of Part I of the Health and Safety at Work etc Act 1974² as³:

- 694 (1) relates to risks that are exclusively relevant to one or more of the following purposes⁴, namely:
- 15
35. (a) securing the proper construction and safe operation of the following transport systems⁵: (i) a railway⁶; (ii) a tramway⁷; or (iii) a transport system using any other mode of guided transport⁸ other than a guided bus system⁹, but not to the extent that the transport system consists of or is operated for the purposes of fairground equipment¹⁰;
36. (b) securing the proper construction and safe operation of locomotives, rolling stock or other vehicles used, or to be used, on such systems¹¹;
37. (c) protecting the public (whether or not they are passengers) from personal injury and other risks arising from the construction and operation of such systems¹²;
38. (d) protecting persons at work from personal injury and other risks so arising¹³;
- or
- 16
- 695 (2) relates to so much of any risks that are primarily so relevant as arises in connection with anything mentioned in heads (a) to (d) above¹⁴.

1. I.e. for the purposes of the Railways Act 2005 s 2, Sch 3 (as amended) and subject to Sch 3 para 1(4): see Sch 3 para 1(1). The Secretary of State may, by regulations, modify the definition of 'railway safety purposes': Sch 3 para 1(4). However, before making any such regulations, he must consult the Office of Rail Regulation, the Health and Safety Commission and such other persons as he considers appropriate: Sch 3 para 1(5). Such regulations are subject to the negative resolution procedure: Sch 3 para 1(6). As to the Office of Rail Regulation see PARA 49 et seq ante.

2. I.e. the general purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended), within the meaning of s 1 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303): see the Railways Act 2005 Sch 3 para 1(1).

3. Ibid Sch 3 para 1(1).

4. Ibid Sch 3 para 1(1)(a).

Under the regime that existed prior to the enactment of the Railways Act 2005, see eg the *Ladbroke Grove Rail Inquiry: Part 2 Report* (HSE) (2001), which was made under the Health and Safety at Work etc Act 1974 s 14(2) (b) (as amended) (inquiry held under direction of the Health and Safety Commission with the consent of the Secretary of State: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 304). See also eg *R v Jarvis Facilities Ltd* [2005] EWCA Crim 1409, [2006] 1 Cr App Rep (S) 247 (defendant pleaded guilty to an offence contrary to the Health and Safety at Work etc Act 1974 because certain required processes had not been carried out which had resulted in the derailment of a freight train).

5. Railways Act 2005 Sch 3 para 1(2)(a).

6. Ibid Sch 3 para 1(3)(a).

For the meaning of 'railway' see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 4 post); definition applied by the Railways Act 2005 Sch 3 para 1(7) (amended by the Railways Act 2005 (Amendment) Regulations 2006, SI 2006/556, reg 2(1), (3)(b)).

7 Railways Act 2005 Sch 3 para 1(3)(b) (amended by the Railways Act 2005 (Amendment) Regulations 2006, SI 2006/556, reg 2(1), (2)(a)).

For the meaning of 'tramway' see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 4 post); definition applied by the Railways Act 2005 Sch 3 para 1(7) (as amended: see note 6 supra).

8 For the meaning of 'guided transport' see the Transport and Works Act 1992 s 67(1) (see PARA 302 note 7 post); definition applied by the Railways Act 2005 Sch 3 para 1(7) (as amended: see note 6 supra).

9 Ibid Sch 3 para 1(3)(d) (amended by the Railways Act 2005 (Amendment) Regulations 2006, SI 2006/556, reg 2(1), (2)(c)).

For these purposes, 'guided bus system' means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation travel along roads and are guided (whether while on the road or at other times) by means of apparatus, a structure or other device which is fixed and not part of the bus or by means of a guidance system which is automatic, where 'bus' means a motor vehicle which is designed or adapted to travel along roads and to carry more than eight passengers but which is not a tramcar: Railways Act 2005 Sch 3 para 1(7) (definitions added by the Railways Act 2005 (Amendment) Regulations 2006, SI 2006/556, reg 2(1), (3)(a)). For these purposes, 'road' (in England and Wales) means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes: Railways Act 2005 Sch 3 para 1(7) (definition added by the Railways Act 2005 (Amendment) Regulations 2006, SI 2006/556, reg 2(1), (3)(c)).

10 Railways Act 2005 Sch 3 para 1(3) (amended by the Railways Act 2005 (Amendment) Regulations 2006, SI 2006/556, reg 2(1), (2)(d)).

For these purposes, 'fairground equipment' has the same meaning as in the Health and Safety at Work etc Act 1974 s 53 (definition as added) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 531): Railways Act 2005 Sch 3 para 1(7) (definition added by the Railways Act 2005 (Amendment) Regulations 2006, SI 2006/556, reg 2(1), (3)(a)).

11 Railways Act 2005 Sch 3 para 1(2)(b).

12 Ibid Sch 3 para 1(2)(c).

13 Ibid Sch 3 para 1(2)(d).

14 Ibid Sch 3 para 1(1)(b).

UPDATE

196 Meaning of 'railway safety purposes'

NOTE 1--2005 Act Sch 3 para 1(5) amended: SI 2008/960.

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197. The Office of Rail Regulation's railway safety functions.

It is the general duty of the Office of Rail Regulation¹:

- 696 (1) to do such things and make such arrangements as it considers appropriate for the railway safety purposes²; and
- 697 (2) to assist and encourage persons concerned with matters relevant to any of those purposes to further those purposes³.

It is the duty of the Office of Rail Regulation:

- 698 (a) to make such arrangements as it considers appropriate for the carrying out of research in connection with the railway safety purposes and for the publication of the results of such research⁴;
- 699 (b) to encourage research by others in that connection⁵;
- 700 (c) to make such arrangements as it considers appropriate for the provision of training and information in connection with the railway safety purposes⁶;
- 701 (d) to encourage the provision by others of training and information in that connection⁷; and
- 702 (e) to make such arrangements as it considers appropriate for securing that⁸ government departments⁹, employers¹⁰, employees¹¹, organisations representing employers and employees respectively¹² and other persons concerned with matters relevant to any of the railway safety purposes¹³:

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- 39. (i) are provided with an information and advisory service with respect to matters relevant to the railway safety purposes¹⁴;
- 40. (ii) are kept informed about such matters¹⁵; and
- 41. (iii) are adequately advised about them¹⁶.

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It is the duty also of the Office of Rail Regulation from time to time to submit such proposals as it considers appropriate for the making of regulations for the railway safety purposes to the authorities having power to make regulations for those purposes under any of the relevant statutory provisions¹⁷.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 Railways Act 2005 s 2, Sch 3 para 2(1)(a). For the meaning of 'railway safety purposes' see PARA 196 ante. As to the functions conferred on the Health and Safety Commission for general purposes that are equivalent to those conferred on the Office of Rail Regulation for railway safety purposes see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

3 Ibid Sch 3 para 2(1)(b).

4 Ibid Sch 3 para 2(2)(a).

5 Ibid Sch 3 para 2(2)(b).

6 Ibid Sch 3 para 2(3)(a).

7 Ibid Sch 3 para 2(3)(b).

8 Ibid Sch 3 para 2(3)(c).

9 Ibid Sch 3 para 2(4)(a).

10 Ibid Sch 3 para 2(4)(b). For these purposes, 'employer' has the same meaning as in the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see s 53(1) (as amended)); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302): see the Railways Act 2005 Sch 3 para 2(8).

11 Ibid Sch 3 para 2(4)(c). For these purposes, 'employee' has the same meaning as in the Health and Safety at Work etc Act 1974 Pt I (as amended) (see s 53(1) (as amended)); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302): see the Railways Act 2005 Sch 3 para 2(8).

12 Ibid Sch 3 para 2(4)(d).

13 Ibid Sch 3 para 2(4)(e).

14 Ibid Sch 3 para 2(3)(c)(i).

15 Ibid Sch 3 para 2(3)(c)(ii).

16 Ibid Sch 3 para 2(3)(c)(iii).

17 Ibid Sch 3 para 2(5). For these purposes, 'relevant statutory provisions' has the same meaning as in the Health and Safety at Work etc Act 1974 Pt I (as amended) (see s 53(1) (as amended)); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302): see the Railways Act 2005 Sch 3 para 2(8).

Before submitting proposals under Sch 3 para 2(5), the Office of Rail Regulation must consult such government departments, and such other persons, as it considers appropriate: Sch 3 para 2(6). Before making regulations for the railway safety purposes independently of any proposals submitted under Sch 3 para 2(5), or making regulations which give effect to such proposals but with modifications, the authority having the power to make the regulations must consult the Office of Rail Regulation: Sch 3 para 2(7).

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198. Reports and investigations for any of the railway safety purposes.

The Office of Rail Regulation¹ may authorise a person to investigate and make a special report on any accident, occurrence, situation or other matter of any sort which that Office thinks it necessary or expedient to investigate²: (1) for any of the railway safety purposes³; or (2) with a view to the making of regulations for any of those purposes⁴. The Office of Rail Regulation may cause the contents of a special report so made⁵, or so much of the contents as it considers appropriate⁶, to be made public at such time, and in such manner, as it thinks fit⁷.

The Office of Rail Regulation may, to such extent as the Secretary of State may determine, defray the other costs (if any) of either such an investigation⁸ or the making of a special report following such an investigation⁹.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 Railways Act 2005 s 2, Sch 3 para 4(1). Where a person who is not a member, officer or employee of the Office of Rail Regulation carries out an investigation and makes a special report under Sch 3 para 4, that Office may pay him such remuneration and expenses as the Secretary of State determines: Sch 3 para 4(3). As to the Secretary of State see PARA 35 ante. As to transitional provisions regarding reports and inquiries undertaken by the Health and Safety Commission see Sch 3 paras 5-6.

3 Ibid Sch 3 para 4(1)(a). For the meaning of 'railway safety purposes' see PARA 196 ante.

4 Ibid Sch 3 para 4(1)(b).

5 Ibid Sch 3 para 4(2)(a).

6 Ibid Sch 3 para 4(2)(b).

7 Ibid Sch 3 para 4(2).

8 Ibid Sch 3 para 4(4)(a).

9 Ibid Sch 3 para 4(4)(b).

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199. Agency agreements with government departments and other public authorities.

Where the Secretary of State¹ considers that any of his statutory or other functions² can appropriately be carried out by the Office of Rail Regulation³ in connection with the carrying out of its safety functions⁴, he and that Office may enter into an agreement for that Office to carry out those functions on his behalf⁵.

Where the Secretary of State considers that any of the statutory or other functions of a government department⁶, or of any other public authority⁷, can appropriately be carried out by the Office of Rail Regulation in connection with the carrying out of its safety functions, he may authorise the Office and that department or authority to enter into an agreement for that Office to carry out those functions on behalf of that department or authority⁸. Such an agreement: (1) may include provision for payments to be made to the Office of Rail Regulation for the carrying out of the functions that it is authorised or required to carry out under the agreement⁹; but (2) may not authorise or require the Office of Rail Regulation to carry out any function consisting in a power to make regulations or other instruments of a legislative character¹⁰.

Where the Office of Rail Regulation considers that any of its safety functions can appropriately be carried out either by a government department¹¹, or by any other public authority¹², that Office and the department or authority may enter into an agreement for the department or authority to carry out those functions on that Office's behalf¹³. Such an agreement may include provision for payments to be made by the Office of Rail Regulation to a government department or public authority for the carrying out of the functions that it is authorised or required to carry out under the agreement¹⁴.

1 As to the Secretary of State see PARA 35 ante.

2 As to the meaning of 'functions' see PARA 7 note 12 ante.

3 As to the Office of Rail Regulation see PARA 49 et seq ante.

4 As to the safety functions of the Office of Rail Regulation see PARA 195 et seq ante.

5 Railways Act 2005 s 2, Sch 3 para 7(1).

6 Ibid Sch 3 para 7(2)(a).

7 Ibid Sch 3 para 7(2)(b).

8 Ibid Sch 3 para 7(2).

9 Ibid Sch 3 para 7(3)(a).

10 Ibid Sch 3 para 7(3)(b). However, Sch 3 para 7(3)(b) does not prevent the Secretary of State and the Office of Rail Regulation from entering into an agreement for that Office to carry out on his behalf the function of making orders under the Level Crossings Act 1983 s 1 (as amended) (see PARA 356 post): Railways Act 2005 Sch 3 para 7(4) (added by the Road Safety Act 2006 s 51(1)).

11 Railways Act 2005 Sch 3 para 8(1)(a).

12 Ibid Sch 3 para 8(1)(b).

13 Ibid Sch 3 para 8(1).

14 Ibid Sch 3 para 8(2).

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200. Co-operation with the Health and Safety Commission.

It is the duty of the Office of Rail Regulation¹ and the Health and Safety Commission²: (1) to enter into arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of safety functions³; (2) to maintain and from time to time to review those arrangements⁴; and (3) to revise them whenever they consider it appropriate to do so⁵.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 367.

3 Railways Act 2005 s 2, Sch 3 para 10(1)(a). For these purposes, 'safety functions' means all the functions of the Health and Safety Commission and of the Health and Safety Executive and the safety functions of the Office of Rail Regulation: Sch 3 para 10(2). As to the meaning of 'functions' see PARA 7 note 12 ante. As to the safety functions of the Office of Rail Regulation see PARA 195 et seq ante.

4 Ibid Sch 3 para 10(1)(b).

5 Ibid Sch 3 para 10(1)(c).

UPDATE

200 Co-operation with the Health and Safety Commission

NOTE 2--The Health and Safety Commission was abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2.

NOTE 3--2005 Act Sch 3 para 10(2) amended: SI 2008/960.

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201. Information powers connected with the carrying out of safety functions.

The Office of Rail Regulation¹ may serve a notice² on any person for the purpose of obtaining information which that Office needs for the carrying out of its safety functions³. Such a notice is one requiring the person on whom it is served: (1) to provide the Office of Rail Regulation with information about such matters as may be specified in the notice⁴; and (2) to do so in the form and manner so specified⁵.

An authorised disclosure about an undertaking may be made to the Office of Rail Regulation by a Minister of the Crown or government department⁶; and a person to whom such a disclosure⁷ is made must not use the information except for the purposes of the safety functions of the Office of Rail Regulation⁸.

It is an offence for a person: (a) to contravene a requirement imposed by such a notice⁹; or (b) to use information obtained by means of an authorised disclosure for purposes other than the safety functions of the Office of Rail Regulation¹⁰.

¹ As to the Office of Rail Regulation see PARA 49 et seq ante.

² *Ie* under the Railways Act 2005 s 2, Sch 3 para 11: see Sch 3 para 11(1). The consent of the Secretary of State is required for the service of a notice under Sch 3 para 11 (Sch 3 para 11(3)); but the consents that may be given for those purposes include a general consent relating to notices of a specified description (Sch 3 para 11(4)). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4). For the meaning of 'notice' see PARA 34 note 4 ante. As to the Secretary of State see PARA 35 ante.

³ *Ibid* Sch 3 para 11(1). As to the safety functions of the Office of Rail Regulation see PARA 195 et seq ante. The powers available under Sch 3 para 11 correspond to the Health and Safety at Work etc Act 1974 s 27 (as amended) (obtaining of information by the Health and Safety Commission, the Health and Safety Executive, enforcing authorities etc: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 369).

⁴ Railways Act 2005 Sch 3 para 11(2)(a).

⁵ *Ibid* Sch 3 para 11(2)(b).

⁶ Nothing in the Statistics of Trade Act 1947 (see TRADE AND INDUSTRY vol 97 (2010) PARA 1009 et seq) is to be construed as preventing or penalising the disclosure by a Minister of the Crown or government department to:

174 (1) the Office of Rail Regulation (Railways Act 2005 Sch 3 para 11(5)(a));

175 (2) a member, officer or employee of that Office (Sch 3 para 11(5)(b)); or

176 (3) a committee established by that Office (Sch 3 para 11(5)(c)),

of the following information about an undertaking (Sch 3 para 11(5)), namely information consisting of:

177 (a) the names and addresses of the persons carrying on the undertaking (Sch 3 para 11(6)(a));

178 (b) the nature of the undertaking's activities (Sch 3 para 11(6)(b));

179 (c) the number of persons of different descriptions who work in the undertaking (Sch 3 para 11(6)(c));

180 (d) the addresses or places where activities of the undertaking are or were carried on (Sch 3 para 11(6)(d));

181 (e) the nature of the activities carried on there (Sch 3 para 11(6)(e)); or

182 (f) the number of persons of different descriptions who work or worked in the undertaking there (Sch 3 para 11(6)(f)).

For the meaning of 'undertaking' for these purposes see the Statistics of Trade Act 1947 s 17(2); and TRADE AND INDUSTRY vol 97 (2010) PARA 1009. For these purposes, 'work' has the same meaning as in the Health and Safety at Work etc Act 1974 Pt I (as amended) (see s 52(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302); see the Railways Act 2005 Sch 3 para 11(10). As to members etc of, and committees established by, the Office of Rail Regulation see PARA 50 et seq ante.

7 le a disclosure that is authorised by ibid Sch 3 para 11(5) (see note 6 supra): see Sch 3 para 11(7).

8 Ibid Sch 3 para 11(7).

9 See ibid Sch 3 para 11(8)(a); and PARA 414 post.

10 See ibid Sch 3 para 11(8)(b); and PARA 414 post. Head (b) in the text refers to the use of information in contravention of Sch 3 para 11(7) (see the text and notes 6-8 supra): see Sch 3 para 11(8)(b).

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202. Railway safety levy.

The Secretary of State¹ has power to make regulations requiring persons who provide railway services² to pay a railway safety levy³. Such regulations may, in particular, determine or enable the Office of Rail Regulation to determine⁴:

- 703 (1) the total amount of the railway safety levy to be imposed in respect of a specified period⁵;
- 704 (2) the persons by whom the levy is to be paid⁶;
- 705 (3) the criteria for assessing the proportion of the levy to be paid by a particular person (which may, in particular, refer to the size of a person's income or provide for an amount to be reduced or waived in specified circumstances)⁷;
- 706 (4) the periods in respect of which the levy is to be paid⁸;
- 707 (5) the manner in which the levy is to be paid⁹;
- 708 (6) the person to whom the levy is to be paid¹⁰;
- 709 (7) when the levy is to be paid¹¹.

Such regulations may also, in particular, enable the Office of Rail Regulation¹²:

- 710 (a) to require a person who provides railway services to supply information for the purposes of the consideration of a matter specified in heads (1) to (7) above¹³;
- 711 (b) where information requested is not supplied, to make assumptions¹⁴;
- 712 (c) to revise a determination of a matter specified in heads (1) to (7) above (whether before, during or after the period to which it relates)¹⁵;
- 713 (d) to make refunds¹⁶.

Such regulations may enable payment to be enforced by civil proceedings¹⁷.

The railway safety levy must be applied only for the purpose of meeting expenses incurred in respect of:

- 714 (i) activities undertaken by the Office of Rail Regulation for railway safety purposes¹⁸;
- 715 (ii) activities in relation to a transport system that falls within those purposes¹⁹ which are undertaken by that Office under or by virtue of any other enactment²⁰.

The railway safety levy may not be used to meet an expense in respect of which a fee is payable under regulations allowing for financial provision²¹ or an expense in respect of a matter specified by the regulations for this purpose²². Where an expense is incurred partly in respect of activity within head (i) or head (ii) above and partly in respect of other activity, the railway safety levy may be used to meet a part of that expense which is reasonably referable to activity within head (i) or head (ii) above²³.

1 As to the Secretary of State see PARA 35 ante.

2 For these purposes, a person provides railway services if he manages or controls, or participates in managing or controlling, a transport system falling within the Railways Act 2005 s 2, Sch 3 para 1(3) (as amended) (see PARA 196 ante); Health and Safety at Work etc Act 1974 s 43A(9) (s 43A added by the Railways and Transport Safety Act 2003 s 105(1); the Health and Safety at Work etc Act 1974 s 43A(9) amended by the Railways Act 2005 Sch 3 para 12(1), (4)).

3 Health and Safety at Work etc Act 1974 s 43A(1) (as added: see note 2 supra). In exercise of the power under s 43A (as added and amended) the Secretary of State has made the Railway Safety Levy Regulations 2006, SI 2006/1010.

4 Health and Safety at Work etc Act 1974 s 43A(5) (as added (see note 2 supra); amended by the Railways Act 2005 Sch 3 para 12(1), (3)). As to the Office of Rail Regulation see PARA 49 et seq ante.

5 Health and Safety at Work etc Act 1974 s 43A(5)(a) (as added: see note 2 supra).

6 Ibid s 43A(5)(b) (as added: see note 2 supra).

7 Ibid s 43A(5)(c) (as added: see note 2 supra).

8 Ibid s 43A(5)(d) (as added: see note 2 supra).

9 Ibid s 43A(5)(e) (as added: see note 2 supra).

10 Ibid s 43A(5)(f) (as added: see note 2 supra).

11 Ibid s 43A(5)(g) (as added: see note 2 supra).

12 Ibid s 43A(6) (as added (see note 2 supra); amended by the Railways Act 2005 Sch 3 para 12(1), (3)).

13 Health and Safety at Work etc Act 1974 s 43A(6)(a) (as added: see note 2 supra). Regulations by virtue of s 43A(6)(a) (as added) may, in particular, make provision: (1) about the manner and timing of the supply of information (s 43A(7)(a) (as so added)); (2) about certification of the accuracy of information supplied (s 43A(7)(b) (as so added)); (3) creating a criminal offence in connection with the supply of inaccurate or misleading information (but not an offence punishable with imprisonment) (s 43A(7)(c) (as so added)).

14 Ibid s 43A(6)(b) (as added: see note 2 supra).

15 Ibid s 43A(6)(c) (as added: see note 2 supra).

16 Ibid s 43A(6)(d) (as added: see note 2 supra).

17 Ibid s 43A(8) (as added: see note 2 supra).

18 Ibid s 43A(2)(a) (s 43A as added (see note 2 supra); s 43A(2)(a), (b) substituted by the Railways Act 2005 Sch 3 para 12(1), (2)). The text refers to activities undertaken by the Office of Rail Regulation under or by virtue of the Health and Safety at Work etc Act 1974 or the Railways Act 2005 Sch 3 (as amended) (see PARA 196 et seq ante): see the Health and Safety at Work etc Act 1974 s 43A(2)(a) (s 43A as so added, s 43A(2)(a) as so substituted).

19 Ie a transport system falling within the Railways Act 2005 Sch 3 para 1(3) (as amended) (see PARA 196 ante); see the Health and Safety at Work etc Act 1974 s 43A(2)(b) (s 43A as added (see note 2 supra); s 43A(2)(b) as substituted (see note 18 supra)).

20 Ibid s 43A(2)(b) (s 43A as added (see note 2 supra); s 43A(2)(b) as substituted (see note 18 supra)).

21 Ie made under ibid s 43 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 354); see s 43A(3) (as added: see note 2 supra).

22 Ibid s 43A(3) (as added: see note 2 supra).

23 Ibid s 43A(4) (as added: see note 2 supra).

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B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC

(A) IN GENERAL

203. Securing the safe operation and construction of railways, etc.

For the purpose of securing the safe operation of railways etc, approval of the Secretary of State¹ may be required before new works, plant and equipment are first brought into use or before works, plant and equipment are first brought into use after alterations have been made to them². This regime has evolved in order to meet the requirements of implementation of the relevant EC Directives, most notably the Railway Safety Directive³.

The application of general health and safety legislation⁴ is supported by regulations which are specific to railways and which also have as their aim the safe operation of the railways⁵, including the prevention of accidents⁶.

Disability discrimination legislation imposes special duties on railway operators to make their systems safe for use in order to assist disabled passengers⁷.

¹ As to the Secretary of State see PARA 35 ante.

² See the Transport and Works Act 1992 s 41 (as amended); and PARA 204 post. See also the Railways Clauses Consolidation Act 1845 s 115 (amended by the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, art 2, Schedule para 1) (engines to be approved by the company, and certificate of approval given; unfit engines to be removed); the Railways Clauses Consolidation Act 1845 s 116 (amended by the Justices of the Peace Act 1949 s 46, Sch 7 Pt III; the Criminal Law Act 1977 s 31(6); the Criminal Justice Act 1982 ss 37, 46; and the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, Schedule para 1) (penalty on persons using improper engines); the Railways Clauses Consolidation Act 1845 s 117 (amended by the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, art 2, Schedule para 1) (carriages to be constructed according to company's regulations); the Railways Clauses Consolidation Act 1845 s 118 (amended by the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, art 2, Schedule para 1) (regulations to be in writing, and to apply also to company's carriages); the Railways Clauses Consolidation Act 1845 s 119 (amended by the Justices of the Peace Act 1949 s 46, Sch 7 Pt III; the Criminal Law Act 1977 s 31(6); the Criminal Justice Act 1982 ss 37, 46; and the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, Schedule para 1) (penalty on persons using improper carriages); the Railways Clauses Consolidation Act 1845 s 120 (amended by the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, art 2, Schedule para 1) (owner's name, etc, to be registered, and exhibited on carriages, if required; owner to allow carriages to be weighed, etc); and the Railways Clauses Consolidation Act 1845 s 121 (on non-compliance carriage may be removed). Provisions under the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 post. For the meaning of 'special Act' see PARA 291 note 2 post.

³ See Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive') (OJ L164, 30.04.2004, p 44); and PARA 30 et seq ante. The basis of compliance with this Directive is the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended), which revoked the Railways (Safety Critical Work) Regulations 1994, SI 1994/299 and the Railways (Safety Case) Regulations 2000, SI 2000/2688, and set out the general duties imposed on transport operators in relation to safety and the requirement for safety management systems previously imposed by the revoked regulations. As to transitional arrangements in relation to approvals made under the revoked regulations see PARA 204 note 4 post.

The Railways (Interoperability) Regulations 2006, SI 2006/397, which implement Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (as

amended) and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (as amended) (as to which see PARA 30 ante) also have implications for railway safety in Great Britain by setting minimum standards for operating railways on the trans-European system: see PARA 210 et seq post. See also the Cableway Installations Regulations 2004, SI 2004/129 (as amended) (cited in PARA 260 post), which implement Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons (OJ L106, 03.05.2000, p 21) (as to which see PARA 30 ante).

4 As to which see PARA 194 et seq ante.

5 See the regulations mentioned in note 3 supra; but also see the Railway Safety Regulations 1999, SI 1999/2244 (as amended) (which focus on safety equipment, as well as on the safety of equipment, and are cited in PARA 205 et seq post).

6 See eg the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) and the general provisions relating to railway accidents cited in PARA 267 et seq post.

7 In relation to duties imposed on operators to assist disabled passengers see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456 (as amended) (cited in PARA 261 et seq post). As to the Disability Discrimination Act 1995 Pt III (ss 19-27) (as amended) and the exemption for rail vehicles that applies to the providers of certain transport services see the Disability Discrimination (Transport Vehicles) Regulations 2005, SI 2005/3190; and DISCRIMINATION vol 13 (2007 Reissue) PARA 587. See also *Roads v Central Trains Ltd* [2004] EWCA Civ 1541, 104 ConLR 62, [2004] All ER (D) 101 (Nov) (action brought in county court under the Disability Discrimination Act 1995 Pt III (as amended) by claimant who experienced difficulty in gaining access to platform at railway station).

UPDATE

203 Securing the safe operation and construction of railways, etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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204. Approval of works, plant and equipment.

For the purpose of securing the safe operation of railways¹, tramways², trolley vehicle systems³ and prescribed systems of guided transport⁴, the Secretary of State may make regulations requiring that the approval of a specified authority⁵ be obtained before⁶:

- 716 (1) new works, plant and equipment⁷ are first brought into use⁸; or
- 717 (2) works, plant and equipment are first brought into use after alterations have been made to them⁹.

Such regulations:

- 718 (a) must prescribe the cases in which approval is required and the procedure for obtaining it¹⁰;
- 719 (b) may include provision as to the time when works, plant and equipment are to be treated as first brought into use, including provision for disregarding periods of testing and other periods of use before sufficient information is available for a decision to be made on an application for approval¹¹;
- 720 (c) may include provision prohibiting the giving of false information to the specified authority¹²;
- 721 (d) may make different provision for different cases, and may include provision authorising the specified authority¹³: (i) to dispense (conditionally or unconditionally) with compliance with regulations that would otherwise apply¹⁴; or (ii) to require compliance with regulations that would not otherwise apply¹⁵, either in the case of any particular works, plant, equipment or alterations, or in the case of works, plant, equipment or alterations of such descriptions as it may determine¹⁶;
- 722 (e) may provide that any person who without reasonable cause contravenes any specified provision of the regulations, or does so in specified circumstances, is guilty of an offence¹⁷.

1 For the meaning of 'railway' see PARA 302 note 4 post.

2 For the meaning of 'tramway' see PARA 302 note 4 post.

3 For the meaning of 'trolley vehicle system' see PARA 302 note 6 post.

4 For these purposes, 'prescribed systems of guided transport' means systems using a mode of guided transport prescribed by regulations under the Transport and Works Act 1992 s 41 (as amended): s 41(7). For the meaning of 'guided transport' see PARA 302 note 7 post. The power to make regulations under s 41 (as amended) is exercisable by statutory instrument, which is to be subject to annulment in pursuance of a resolution of either House of Parliament: s 41(8).

The Secretary of State, in exercise of the powers conferred by s 41 (as amended) made the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157 (as amended), which have been revoked with effect from 1 October 2006 by the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 34, Sch 7. This revocation is subject to transitional provisions and savings in relation to applications for approval made to the Office of Rail Regulation before 1 October 2006 under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157 (as amended) with provision made for such approvals to satisfy the requirements of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, regs 4-5: see reg 29(2)-(6); and

PARA 232 et seq post. The transitional arrangements provide for projects to move from the scheme based on the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157 (as amended) to one based on the safety verification and safety management systems contained in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended): see PARA 232 et seq post. As to the Secretary of State see PARA 35 ante; and as to the Office of Rail Regulation see PARA 49 et seq ante.

5 For these purposes, 'specified authority' means such authority as may be specified in regulations under the Transport and Works Act 1992 s 41 (as amended): s 41(7) (definition added by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 6, Schedule para 1(1), (2)(d)).

6 Transport and Works Act 1992 s 41(1) (amended by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, Schedule para 1(1), (2)(a)).

7 For these purposes, 'equipment' includes vehicles: Transport and Works Act 1992 s 41(7). As to the meaning of 'vehicle' see PARA 302 note 4 post.

8 Ibid s 41(1)(a).

9 Ibid s 41(1)(b).

10 Ibid s 41(2)(a).

11 Ibid s 41(2)(b).

12 Ibid s 41(2)(c) (amended by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, Schedule para 1(1), (2)(b)).

13 Transport and Works Act 1992 s 41(3) (amended by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, Schedule para 1(1), (2)(c)).

14 Transport and Works Act 1992 s 41(3)(a).

15 Ibid s 41(3)(b).

16 Ibid s 41(3) (as amended: see note 14 supra).

17 Ibid s 41(4). Where the commission by any person of an offence under s 41 (as amended) is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of s 41(5) whether or not proceedings are taken against the first-mentioned person: s 41(5). A person guilty of an offence under s 41 (as amended) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 41(6). As to the standard scale see PARA 370 note 7 post. As to the offence of failure to undertake established safety verification procedures see PARA 371 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(A) In general/205. Requirement for train protection systems.

205. Requirement for train protection systems.

No person is to operate, and no infrastructure controller¹ is to permit the operation of, a train² on a railway unless a train protection system is in service in relation to that train and railway³. For these purposes, 'train protection system' means equipment which:

- 723 (1) causes the brakes of the train to apply automatically if the train passes without authority a stop signal⁴, such passing of which could cause the train to collide with another train⁵, or if the train travels at excessive speed on a relevant approach⁶; and
- 724 (2) is installed so as to operate at every stop signal referred to in head (1) above, except a stop signal on the approach to an emergency crossover⁷, and at an appropriate place on every relevant approach⁸.

However, where it is reasonably practicable to install it, 'train protection system' means equipment which automatically controls the speed of the train to ensure, so far as possible, that a stop signal is not passed without authority and that the permitted speed is not exceeded at any time throughout the train's journey⁹.

In any proceedings against a person for an offence for contravening the requirement for a train protection system set out in heads (1) and (2) above¹⁰, it is a defence for that person to prove that:

- 725 (a) at the relevant time the train protection system¹¹ or a relevant part had failed, or had been taken out of service, because of a fault¹²;
- 726 (b) in the case where the fault is in equipment on the train, the train had commenced its journey before the discovery of the fault or was being driven without passengers to a place for the purpose of repair¹³;
- 727 (c) it was not reasonably practicable to remedy the fault sooner¹⁴; and
- 728 (d) suitable measures had been taken after the discovery of the fault to mitigate the risk of trains colliding or derailling¹⁵.

In any proceedings against a person for an offence of contravening that requirement, in so far as that requirement relates to having in service in relation to a train on a railway the equipment referred to in the exception in the definition of 'train protection system'¹⁶, it is a defence for that person to prove that: (i) at the relevant time the equipment or a relevant part of it had failed, or had been taken out of service, because of a fault¹⁷; (ii) it was not reasonably practicable to remedy the fault sooner¹⁸; and (iii) equipment referred to in heads (1) and (2) above was at the relevant time in service in relation to that train and railway¹⁹.

1 For these purposes, 'infrastructure controller' means a person who controls railway infrastructure: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1) (definition substituted by SI 2006/599). 'Railway infrastructure' means fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway, but it does not include a station: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1) (definition added by SI 2006/599). 'Station' means a railway passenger station or terminal, but does not include any permanent way or plant used for signalling or exclusively for supplying electricity for operational purposes to the railway: Railway Safety Regulations 1999, SI

1999/2244, reg 2(1) (definition added by SI 2006/599). For these purposes, any reference to a person who controls railway infrastructure is a reference to a person who, in the course of a business or other undertaking carried on by him, whether for profit or not, is in operational control of that infrastructure, except that, where such control is for the time being exercised by a person undertaking maintenance, repair or alteration work on the infrastructure, it is a reference to a person who would be in operational control of the infrastructure if such work were not being undertaken: Railway Safety Regulations 1999, SI 1999/2244, reg 2(4A) (added by SI 2006/599).

For these purposes, 'railway' means a system of transport employing parallel rails which provide support and guidance for vehicles carried on flanged wheels and form a track which either is of a gauge of at least 350 mm or crosses a carriageway (whether on the same level), except that it does not include: (1) a tramway; (2) any part which runs along and at the same level as a street or in any other place to which the public has access (including a place to which the public has access only on making a payment); (3) any part where the permitted speed is such as to enable the driver to stop the train in the distance he can see ahead in clear weather conditions; (4) any part normally used other than for the carriage of fare paying passengers; or (5) such a system if on no part of it there is a line speed exceeding 40 kilometres per hour: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1), Schedule (amended by SI 2001/3291). 'Line speed' means the highest of the permitted speeds on the railway concerned; and 'permitted speed' means the maximum speed permitted on the part of the railway concerned: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1). For the meanings of 'carriageway', 'street', 'tramway' and 'vehicle' for these purposes see reg 2(1), Schedule (definition of 'tramway' added by SI 2006/599).

2 For the meaning of 'train' see PARA 82 note 2 ante; definition applied by the Railway Safety Regulations 1999, SI 1999/2244, reg 2(1). For these purposes, any reference to a person operating a train or rolling stock is a reference to the person operating a train or rolling stock for the time being in the course of a business or other undertaking carried on by him (whether for profit or not), but it does not include a self-employed person by reason only that he himself drives or otherwise controls the movement of a train: reg 2(3).

3 Ibid reg 3(1). It is sufficient compliance with reg 3(1) if the train is being operated on a railway which immediately before 30 January 2000 (ie the coming into force of reg 3: see reg 1) was used (exclusively or not) by London Underground Ltd, Tyne and Wear Passenger Transport Executive, Strathclyde Passenger Transport Executive, or Serco Metrolink Ltd, and, in relation to which there is in service equipment which causes the brakes of the train to apply automatically if the train passes a stop signal without authority: reg 3(3). As to exemption from the prohibitions contained in the Railway Safety Regulations 1999, SI 1999/2244 (as amended) see PARA 207 post.

The Railway Safety Regulations 1999, SI 1999/2244 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303): see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post; and as to defences to such contravention see the text and notes 10-19 infra.

4 For these purposes, 'stop signal' means a signal conveying to the driver of the train an instruction that he should stop the train except that it does not include: (1) a signal provided for shunting purposes only; (2) a hand signal; or (3) a buffer stop: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1). 'Buffer stop' means a buffer stop at the end of a passenger platform: reg 2(1).

5 For these purposes, any reference, except in *ibid* reg 4 (see PARA 206 post) to a train colliding with another train does not include a reference to a train colliding with the rear of another train travelling in the same direction on the same track: reg 2(4).

6 For these purposes, 'relevant approach' means: (1) an approach to a stop signal referred to in the first limb of the definition of 'train protection system' (see head (1) in the text) except where a train travelling at the maximum speed it could attain on that approach would be stopped within the distance between the signal and the point where it could collide with another train by reason of the train protection system installed at the stop signal; (2) an approach to part of the railway where there is a speed restriction if: (a) the permitted speed on that approach is 60 miles per hour or more; and (b) in order to comply with the restriction, a train travelling at the permitted speed on that approach would need to have its speed reduced by one third or more; (3) an approach to a buffer stop: *ibid* reg 2(1). 'Speed restriction' means a permitted speed other than the line speed: reg 2(1). Nothing in the Railway Safety Regulations 1999, SI 1999/2244, (as amended) requires equipment referred to head (1) or head (2) in the text (definition of a 'train protection system') to function in relation to a temporary speed restriction, and accordingly any reference to the permitted speed in relation to such equipment is, in a case where a temporary speed restriction is in place, a reference to the permitted speed which normally applies on that part of the line concerned: reg 2(2). 'Temporary speed restriction' means a speed restriction which is in place for no longer than three months and used in accordance with special procedures established by the infrastructure controller: reg 2(1).

For these purposes, 'excessive speed', in relation to: (i) an approach to a stop signal or buffer stop, means such speed as would prevent the train from stopping at that signal or buffer stop; (ii) an approach to part of the railway where there is a speed restriction, means such speed as would prevent the restriction from being

complied with when the train enters that part: reg 2(1). For the purposes of head (ii) supra, a speed restriction is to be treated as being complied with if the speed of the train does not exceed the total of the permitted speed and such additional speed as may be approved by the relevant authority: reg 2(1) (amended by SI 2006/557). 'Approved' means approved for the time being in writing: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1). 'Relevant authority' means the Office of Rail Regulation, where it is made the enforcing authority in relation to the operation of a railway by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1) (see PARA 195 ante), and the Health and Safety Executive in any other case: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1) (definition added by SI 2006/557). As to the Office of Rail Regulation see PARA 49 et seq ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

7 For these purposes, 'emergency crossover' means a connection between two railway tracks to enable trains to change tracks and which is used: (1) in an emergency; or (2) to enable engineering work to be carried out, in accordance with special procedures established by the infrastructure controller: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1).

8 Ibid reg 2(1).

9 Ibid reg 2(1).

10 Ie for contravening ibid reg 3(1) (see the text and notes 1-3 supra): see reg 3(4).

11 Ie or, where ibid reg 3(3) (see note 3 supra) is relied on, the equipment referred to therein: see reg 3(4) (a).

12 Ibid reg 3(4)(a).

13 Ibid reg 3(4)(b).

14 Ibid reg 3(4)(c).

15 Ibid reg 3(4)(d).

16 Ie the exception set out in the text and note 9 supra: see ibid reg 3(5).

17 Ibid reg 3(5)(a).

18 Ibid reg 3(5)(b).

19 Ibid reg 3(5)(c).

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206. Prohibition on operation of certain rolling stock on a railway.

No person is to operate, and no infrastructure controller¹ is to permit the operation of, any Mark I rolling stock² on a railway³.

Nor is any person to operate, nor is any infrastructure controller to permit the operation of, any rolling stock on a railway if the rolling stock has hinged doors for use by passengers for boarding and alighting from the train⁴ (other than doors which have a means of centrally locking them in a closed position)⁵.

1 For the meaning of 'infrastructure controller' for these purposes see PARA 205 note 1 ante.

2 For these purposes, 'Mark I rolling stock' means rolling stock which has a structural underframe which provides its own longitudinal strength and has a passenger compartment created on the underframe which relies mainly on the underframe for its longitudinal strength: Railway Safety Regulations 1999, SI 1999/2244, reg 2(1). As to the meaning of references to 'operating rolling stock' for these purposes see PARA 205 note 2 ante.

3 Ibid reg 4(1). However, the prohibition in reg 4(1) does not apply to rolling stock which at the relevant time is being exclusively operated other than for the carriage of fare paying passengers or by London Underground Ltd, Tyne and Wear Passenger Transport Executive, Strathclyde Passenger Transport Executive or Serco Metrolink Ltd: reg 4(2). For the meaning of 'railway' for these purposes see PARA 205 note 1 ante. As to exemption from the prohibitions contained in the Railway Safety Regulations 1999, SI 1999/2244 (as amended) see PARA 207 post.

The Railway Safety Regulations 1999, SI 1999/2244 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303): see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post.

4 For the meaning of references to 'train' for these purposes see PARA 205 note 2 ante.

5 Railway Safety Regulations 1999, SI 1999/2244, reg 5(1). However, the prohibition in reg 5(1) does not apply to rolling stock which at the relevant time is being exclusively operated other than for the carriage of fare paying passengers: reg 5(2).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(A) In general/207. Exemption from prohibitions contained in the railway safety regulations.

207. Exemption from prohibitions contained in the railway safety regulations.

The relevant authority¹ may by certificate in writing exempt any person (or class of persons), any railway² (or part of a railway or class of railways) or any train³ or rolling stock (or class of train or rolling stock) from any prohibition imposed by the railway safety regulations⁴ and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time⁵.

Before granting an exemption, the relevant authority must consult such persons as it considers appropriate⁶; and, in deciding whether to grant any such exemption, the relevant authority must have regard to⁷: (1) the conditions, if any, which it proposes to attach to the exemption⁸; (2) any other requirements imposed by or under any enactment which apply to the case⁹; and (3) all other circumstances of the case¹⁰.

1 For the meaning of 'relevant authority' for these purposes see PARA 205 note 6 ante.

2 For the meaning of 'railway' for these purposes see PARA 205 note 1 ante.

3 For the meaning of references to 'train' for these purposes see PARA 205 note 2 ante.

4 Ie from any prohibition imposed by the Railway Safety Regulations 1999, SI 1999/2244 (as amended) regarding operating a train on a railway unless a train protection system is in service in relation to that train and railway (see PARA 205 ante) and regarding the operation of certain rolling stock on a railway (see PARA 206 ante): see reg 6(1) (as amended: see note 5 infra).

5 Ibid reg 6(1) (amended by SI 2006/557).

6 Railway Safety Regulations 1999, SI 1999/2244, reg 6(2) (amended by SI 2006/557).

The Railway Safety Regulations 1999, SI 1999/2244 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303): see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post.

7 Railway Safety Regulations 1999, SI 1999/2244, reg 6(3) (amended by SI 2006/557).

8 Railway Safety Regulations 1999, SI 1999/2244, reg 6(3)(a).

9 Ibid reg 6(3)(b).

10 Ibid reg 6(3)(c).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(A) In general/208. Directions limiting speeds and loads.

208. Directions limiting speeds and loads.

The relevant enforcing authority¹ may give a direction² to any person carrying on an undertaking which includes the provision of transport services on a railway³, tramway⁴ or system using any other mode of guided transport⁵. Such a direction may impose: (1) maximum speeds at which vehicles⁶ in use on the system may travel⁷; and (2) maximum weights that may be transmitted to the rails (or other structures which support vehicles in use on the system) by any one pair of wheels (or by such other parts of the vehicles as may be specified in the direction)⁸. Such directions may make different provision for different vehicles, different parts of the system, or otherwise for different circumstances⁹.

Before giving such a direction, the relevant enforcing authority must consult the person to whom that authority proposes to give it¹⁰.

If such a direction is contravened in the course of the provision of transport services by the person to whom the direction was given, that person is guilty of an offence¹¹.

1 For these purposes, 'relevant enforcing authority' means the enforcing authority responsible for the enforcement of the relevant statutory provisions in relation to the mode of transport to which the direction (as to which see the text and notes 2-5 *infra*) applies: Transport and Works Act 1992 s 45(7) (s 45(7), (8) added by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 6, Schedule para 1(1), (3)(c)). 'Enforcing authority' has the same meaning as in the Health and Safety at Work etc Act 1974 s 18(7)(a) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 352): Transport and Works Act 1992 s 45(8) (as so added). 'Relevant statutory provisions' has the same meaning as in the Health and Safety at Work etc Act 1974 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302): Transport and Works Act 1992 s 45(8) (as so added).

2 *Ie* under *ibid* s 45 (as amended): see s 45(1) (as amended: see note 5 *infra*).

3 For the meaning of 'railway' see PARA 302 note 4 *post*.

4 For the meaning of 'tramway' see PARA 302 note 4 *post*.

5 Transport and Works Act 1992 s 45(1) (amended by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, Schedule para 1(1), (3)(a)). For the meaning of 'guided transport' see PARA 302 note 7 *post*.

6 As to the meaning of 'vehicle' see PARA 302 note 4 *post*.

7 Transport and Works Act 1992 s 45(2)(a).

8 *Ibid* s 45(2)(b).

9 *Ibid* s 45(3).

10 *Ibid* s 45(4) (amended by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, Schedule para 1(1), (3)(b)).

11 See the Transport and Works Act 1992 s 45(5), (6); and PARA 372 *post*.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(A) In general/209. Improperly loaded carriages causing potential danger or obstruction.

209. Improperly loaded carriages causing potential danger or obstruction.

If any carriage using a railway¹ is improperly loaded such as to be liable to collision with other carriages properly loaded, or to be otherwise dangerous, or if any carriage or goods are left on the railway so as to obstruct its passage or operation, the railway undertaker² may lawfully unload and remove the carriage or the goods in any proper manner so as to prevent any collision or obstruction; and he may detain them until the expenses of unloading, removal or detention are paid³. An undertaker is not liable for any damage or loss caused by any such unloading, removal or detention of carriage or goods, except for damage caused wilfully or negligently; nor is an undertaker liable for the safe custody of the carriage or goods unless they are wrongfully detained⁴.

1 For the meaning of 'railway' see PARA 326 note 1 post.

2 As to railway undertakers see PARA 326 note 1 post.

3 See the Railways Clauses Consolidation Act 1845 s 122.

Provisions under the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 post. For the meaning of 'special Act' see PARA 291 note 2 post.

4 See *ibid* s 123; and note 3 *supra*.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(B) Interoperability of the United Kingdom Parts of the Trans-European Rail System/(a) Overview/210. Regulations setting standards to be met by railway assets, vehicles and services.

(B) INTEROPERABILITY OF THE UNITED KINGDOM PARTS OF THE TRANS-EUROPEAN RAIL SYSTEM

(a) Overview

210. Regulations setting standards to be met by railway assets, vehicles and services.

The Secretary of State¹ may by regulations² make provision for the setting of standards to be complied with in relation to railway assets³, railway vehicles⁴ or railway services⁵. The regulations may:

- 729 (1) provide for standards to be set (and from time to time varied)⁶ or for compliance with standards to be monitored⁷, by persons specified in, or designated in accordance with, the regulations⁸;
- 730 (2) authorise the setting of standards which involve obtaining the approval of any person⁹;
- 731 (3) authorise the charging of fees in respect of the monitoring of compliance with standards¹⁰, or the seeking of approvals in connection with standards¹¹;
- 732 (4) impose requirements to provide information¹² on persons who are required to comply with standards¹³, or set, or monitor compliance with, standards¹⁴, and prohibit the giving of false information¹⁵;
- 733 (5) create criminal offences in respect of failures to comply with requirements imposed by the regulations¹⁶.

The regulations also may make different provision for different cases and may (in particular) include provision authorising conditional or unconditional dispensation from requirements imposed by the regulations which would otherwise apply, or requiring compliance with requirements so imposed which would not otherwise apply, in particular cases or descriptions of case¹⁷. The regulations also may include such incidental, consequential, supplementary or transitional provisions or savings as the Secretary of State may consider appropriate, including (in particular) provision modifying any provision made by or under any other enactment¹⁸.

¹ As to the Secretary of State see PARA 35 ante.

² The regulations must be made by statutory instrument which are subject to annulment in pursuance of a resolution of either House of Parliament: Transport Act 2000 s 247(12).

³ For the meaning of 'railway asset' see PARA 83 note 7 ante; definition applied by ibid s 254.

⁴ As to the meaning of 'railway vehicles' see PARA 82 note 2 ante; definition applied by ibid s 254.

⁵ Ibid s 247(1). For the meaning of 'railway services' see PARA 82 ante; definition applied by s 254. In exercise of the powers conferred as mentioned in the text and under the European Communities Act 1972 s 2(2), the Secretary of State has made the Railways (Interoperability) Regulations 2006, SI 2006/397. These regulations apply to the high-speed rail system, the conventional TEN rail system, their subsystems and to

interoperability constituents: reg 3(1). Transitional provisions in relation to the application of the regulations are set out in reg 3(2), (3); and general transitional provisions and savings are made in reg 40.

For these purposes, 'high-speed rail system' means that part of the trans-European high-speed rail system located within the territory of the United Kingdom and identified by reference to the lines specified in reg 2(3), Sch 11: reg 2(3). 'Trans-European high-speed rail system' means the infrastructure and high-speed rolling stock described in reg 2(2) (amended by SI 2007/3386), the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 1; 'high-speed rolling stock' means rolling stock which is or forms part of the rolling stock subsystem of the high-speed rail system; 'rolling stock' means a vehicle falling within the definition of rolling stock in the Railways Act 1993 s 83(1) (as to which see PARA 82 note 2 ante), except that where such a vehicle can only be operated as part of a fixed formation multiple unit it means all of that unit; and 'subsystem', in relation to the trans-European high-speed rail system, means the whole, or, as the context requires, part of a subdivision of the trans-European high-speed rail system as specified in the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2) (as so amended), Sch 3 para 1(a), (b), namely structural subsystems and functional subsystems, which forms or is intended to form part of the high-speed rail system; and the reference in Sch 3 to operational area subsystems is to be construed as a reference to functional subsystems: reg 2(3). In relation to the trans-European high-speed rail system, 'structural subsystem' means: (1) high-speed rolling stock; and (2) the whole or a part of an infrastructure subsystem, an energy subsystem, a control and command and signalling subsystem and a traffic operation and management subsystem; and 'functional subsystem' means an operational subsystem as specified in Sch 3 para 1(b): reg 2(3). For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

For these purposes, 'conventional TEN rail system' means that part of the trans-European conventional rail system located within the territory of the United Kingdom, where 'trans-European conventional rail system' means the infrastructure and conventional rolling stock described in reg 2(2) (as so amended), Sch 2: reg 2(3). 'Conventional rolling stock' means rolling stock which is or forms part of the rolling stock subsystem of the conventional TEN rail system; 'subsystem' means the whole, or, as the context requires, part of a subdivision of the trans-European conventional rail system as specified in reg 2(2) (as so amended), Sch 4 para 1(a), (b), namely structural subsystems and functional subsystems, which forms or is intended to form part of the conventional TEN rail system; and the reference in Sch 4 to operational area subsystems is to be construed as a reference to functional subsystems: reg 2(3). In relation to the trans-European conventional rail system, 'structural subsystem' means: (a) conventional rolling stock; and (b) the whole or a part of an infrastructure subsystem, an energy subsystem, a control and command and signalling subsystem and a traffic operation and management subsystem; and 'functional subsystem' means an operational subsystem as specified in Sch 4 para 1(b): reg 2(3).

For these purposes, 'interoperability constituent' means any elementary component, group of components, sub-assembly or complete assembly of equipment that is incorporated or intended to be incorporated into a subsystem upon which the interoperability of the trans-European high-speed rail system or trans-European conventional rail system of which the subsystem is a part depends and that has been specified by a TSI as being an interoperability constituent; where 'technical specifications for interoperability' (TSI) means technical specifications for interoperability which are published in the Official Journal pursuant to Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) art 6(1) (substituted by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)) or Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) art 6(1) (substituted by Directive 2004/50/EC (OJ L164, 30.04.2004, p 114)), and in force (Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3)); and 'interoperability' means the ability of the trans-European conventional rail system, or the ability of the trans-European high-speed rail system, as the case may be, to allow the safe and uninterrupted movement of trains which accomplish the required (or specified) levels of performance for these lines (which ability rests on all the regulatory, technical and operational conditions to be met in order to satisfy the essential requirements): Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) art 2(b); Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) art 2(b); definitions applied by the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3). 'Essential requirements', except in the definition of 'European technical approval' (as to which see PARA 218 note 5 post), means all the conditions that must be met by the subsystems and interoperability constituents, including interfaces in relation to the high-speed rail system as set out in reg 2(2) (as so amended), Sch 5 and interfaces in relation to the conventional TEN rail system as set out in reg 2(2) (as so amended), Sch 6: reg 2(3). As to technical specifications for interoperability which are published in the Official Journal as mentioned supra see PARA 30 ante.

The Schedules to the Railways (Interoperability) Regulations 2006, SI 2006/397, reproduce, or substantially reproduce, Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annexes I-VII and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annexes I-VII as follows:

- 183 (i) Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex I (as substituted) (the Trans-European High-Speed Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 1);

- 184 (ii) Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex I (as substituted) (the Trans-European Conventional Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 2);
- 185 (iii) Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex II (as substituted) (Subsystems of the Trans-European High-Speed Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 3);
- 186 (iv) Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex II (Subsystems of the Trans-European Conventional Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 4);
- 187 (v) Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex III (as amended) (Essential Requirements for the Trans-European High-Speed Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 5);
- 188 (vi) Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex III (as amended) (Essential Requirements for the Trans-European Conventional Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 6);
- 189 (vii) Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex IV and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex IV (Conformity and Suitability for Use of Interoperability Constituents: see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2) (as so amended), Sch 7);
- 190 (viii) Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex V and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex V (Verification Declaration of Subsystems: see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2) (as so amended), Sch 8 (amended by SI 2007/3386));
- 191 (ix) Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex VI (as substituted) and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex VI (as substituted) (Verification Procedure for Subsystems: see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2) (as so amended), Sch 9 (substituted by SI 2007/3386));
- 192 (x) Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex VII (as amended) and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex VII (as amended) (Minimum Criteria which must be taken into account by the Member States when Notifying Bodies: see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2) (as so amended), Sch 10).

These Schedules are not set out in this work and their detail is to be found by reference to the originals.

For the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) (as amended) is known as the 'High-Speed Directive' and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) (as amended) is known as the 'Conventional Directive': see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(1) (amended by SI 2007/3386).

- 6 Transport Act 2000 s 247(2)(a).
- 7 Ibid s 247(2)(b).
- 8 Ibid s 247(2).
- 9 Ibid s 247(3).
- 10 Ibid s 247(4)(a).
- 11 Ibid s 247(4)(b).
- 12 As to the meaning of 'information' see PARA 34 note 5 ante; definition applied by ibid s 254.
- 13 Ibid s 247(5)(a).
- 14 Ibid s 247(5)(b).
- 15 Ibid s 247(5).
- 16 Ibid s 247(6). The regulations may provide for such offences to be triable: (1) only summarily (s 247(7)(a)); or (2) either summarily or on indictment (s 247(7)(b)). The regulations may further provide for: (a) an

offence triable only summarily to be punishable on conviction with a fine not exceeding level 5 on the standard scale, or such lower amount as may be prescribed by regulations made by the Secretary of State (ss 247(8), 254); and (b) an offence triable either summarily or on indictment to be punishable: (i) on summary conviction, with a fine not exceeding the statutory maximum (or such lower amount as may be prescribed) (s 247(9)(a)); or (ii) on conviction on indictment, with a fine (s 247(9)(b)). As to the standard scale see PARA 370 note 7 post; and as to the statutory maximum see PARA 367 note 6 post.

17 Ibid s 247(10).

18 Ibid s 247(11).

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(b) Subsystems

UPDATE

210 Regulations setting standards to be met by railway assets, vehicles and services

NOTE 5--SI 2006/397 reg 3(2) amended, reg 3(3) substituted: SI 2008/1746.

211. Prohibition on unauthorised subsystems being placed in service.

No person may place in service on the high-speed rail system¹ or the conventional TEN rail system² any structural subsystem³ which has been constructed, upgraded⁴ or renewed⁵ as a project unless, for the particular rail system⁶: (1) the Safety Authority⁷ has given an authorisation for the placing in service of that subsystem⁸; or (2) the Competent Authority⁹ has decided¹⁰ that for the upgrading or renewal of the subsystem, an authorisation is not required for the subsystem to be placed in service¹¹.

An application for an authorisation under head (1) above must be made in writing¹² to the Safety Authority and be accompanied by the complete technical file¹³ (including the certificate of verification)¹⁴ and the verification declaration¹⁵. The Safety Authority, in considering an application, may not require checks carried out under the appropriate verification assessment procedure to be carried out again¹⁶. However, this is subject to the proviso that the Authority may require the applicant to carry out any additional checks which the Authority considers necessary in relation to the project subsystem¹⁷ if that subsystem appears to the Authority not to meet the essential requirements¹⁸. Where additional checks are so required, the Authority must inform the applicant that the application cannot be determined before the additional checks are carried out¹⁹ and the Authority must notify the Commission²⁰ in writing forthwith of the additional checks it requires and the reasons for requiring those checks²¹.

The Safety Authority must issue an authorisation for the placing in service of a project subsystem on or as part of the high-speed rail system or conventional TEN rail system, where it is satisfied that:

- 734 (a) the verification declaration has been drawn up²²;
- 735 (b) the project subsystem has been so designed, constructed and installed as to meet the essential requirements²³ relating to that subsystem when placed in service on that rail system²⁴; and
- 736 (c) the project subsystem is compatible with the particular rail system into which it is being placed in service²⁵.

The Safety Authority must determine an application either by authorising the placing in service of the project subsystem²⁶ or by refusing the application for authorisation²⁷. An authorisation issued by the Safety Authority for the placing in service of an item of rolling stock must be treated²⁸ as also being an authorisation for additional rolling stock that the contracting entity

constructs or contracts with another person to construct under the same contract or project and where the construction is to the same standards and specifications²⁹.

1 For the meaning of 'high-speed rail system' see PARA 210 note 5 ante.

2 For the meaning of 'conventional TEN rail system' see PARA 210 note 5 ante.

3 For the meanings of 'structural subsystem' and 'subsystem' see PARA 210 note 5 ante.

4 For these purposes, 'upgrading' means any major modification work on a structural subsystem or part of a structural subsystem which improves the overall performance of the subsystem; and cognate expressions must be construed accordingly: Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3).

5 For these purposes, 'renewal' means any major substitution work on a structural subsystem or part of a structural subsystem which does not improve the overall performance of the subsystem; and cognate expressions are to be construed accordingly: *ibid* reg 2(3).

6 *Ibid* reg 4(1).

7 For these purposes, 'Safety Authority' means the Office of Rail Regulation, except in relation to the Channel Tunnel system, where it means the Intergovernmental Commission: *ibid* reg 2(3). For the meaning of 'Channel Tunnel system' see the Channel Tunnel Act 1987 s 1(7) (definition of 'tunnel system') (see PARA 109 note 1 ante); definition applied by the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3). The 'Intergovernmental Commission' means the Intergovernmental Commission established by the Treaty: see the Channel Tunnel Act 1987 s 49(1); definition applied by the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3). For the meaning of 'Treaty' for these purposes see PARA 109 note 1 ante. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the Channel Tunnel generally see PARA 324 post.

8 *Ibid* reg 4(1)(a). A structural subsystem is placed in service in relation to the high-speed rail system or the conventional TEN rail system when, having been constructed, upgraded or renewed, it is first used on or as part of that rail system in the transportation of passengers or freight or for the purpose for which it was designed, but does not include any testing or trials conducted in the verification assessment procedure or for additional checks required by the Safety Authority: reg 4(10). For the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, 'placed in service' has the meaning given in reg 4(10); and cognate expressions must be construed accordingly: reg 2(3). 'Verification assessment procedure' means the procedures specified in reg 9(1) (see PARA 214 post), and the reference in reg 2(2) (as amended), Sch 9 (as substituted) (verification procedure for subsystems: see PARA 210 note 5 ante) to 'verification procedure' must be construed as a reference to the verification assessment procedure: reg 2(3).

An authorisation under reg 4(1)(a) is deemed to satisfy the requirements in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended) as a verification suitable to control the potential risks of a subsystem: see PARA 236 note 4 post; and see note 11 *infra*.

9 For these purposes, 'Competent Authority' means the Secretary of State, except in relation to the Channel Tunnel system, where it means the Intergovernmental Commission: *ibid* reg 2(3). As to the Secretary of State see PARA 35 ante.

10 *Ie* under *ibid* reg 5 (as to which see PARA 212 post): see reg 4(1)(b).

11 *Ibid* reg 4(1)(b). Even if an upgrading or renewal project does not require authorisation for the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, it still has to meet the requirements of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599: see PARA 231 et seq post.

12 In any Act, unless the contrary intention appears, 'writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly: Interpretation Act 1978 s 5, Sch 1. For the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, 'writing', apart from its usual meaning, includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent, in legible form: reg 2(3).

13 For these purposes, 'technical file' means a file relating to a structural subsystem which contains the matters required by *ibid* reg 11(1) (as amended) (see PARA 215 post), and any reference in reg 2(2) (as amended), Schs 1-10 (as amended) (as to which see PARA 210 note 5 ante) to the 'technical record' must be construed as a reference to the technical file: reg 2(3).

14 Ibid reg 4(2)(a) (amended by SI 2007/3386). For these purposes, 'certificate of verification' means a certificate drawn up by the notified body in relation to a structural subsystem as part of the verification assessment procedures for that structural subsystem; and the reference in the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 9 (as substituted) (as to which see PARA 210 note 5 ante) to 'certificate' must be construed as a reference to the certificate of verification: reg 2(3) (definition substituted by SI 2007/3386). For the meaning of 'notified body' see PARA 223 note 2 post.

15 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 4(2)(b). For these purposes, 'verification declaration' means an EC declaration of verification in relation to a structural subsystem drawn up by a contracting entity pursuant to reg 8(3) (as amended) (as to which see PARA 214 post): reg 2(3). 'Contracting entity' means the person in relation to a project who: (1) designs or manufactures or intends to design or manufacture the project on his own account; or (2) contracts or intends to contract with another person for that other person to design or manufacture the project; and includes an authorised representative established in the Community appointed by the contracting entity to act on his behalf: reg 2(3). 'Project' means a discrete scheme for the construction, upgrading or renewal of either: (a) high-speed rolling stock or conventional rolling stock; or (b) the whole or part of any other subsystem of the high-speed rail system or the conventional TEN rail system, and where it is intended to carry out that construction, upgrading or renewal in parts, each of which are to be placed in service on a permanent basis independently of the other parts, it means any such part: reg 2(3). For the meanings of 'conventional rolling stock' and 'high-speed rolling stock' see PARA 210 note 5 ante. As to the meaning of references to the European Community see PARA 212 note 30 post.

16 Ibid reg 4(3).

17 For these purposes, 'project subsystem' means a structural subsystem which is subject to the requirement for authorisation under ibid reg 4(1)(a) (see head (1) in the text): see reg 4(4).

18 Ibid reg 4(4). The text refers to meeting the essential requirements for project subsystems in accordance with reg 7: see reg 4(4). For the meaning of 'essential requirements' see PARA 210 note 5 ante.

Accordingly, for the purposes of reg 4(4), and for the purposes of reg 4(6) (see the text and notes 22-25 infra), reg 8(3)(a) (see PARA 214 post), reg 10(1) and reg 27(2) (as amended) (see PARA 224 post), the essential requirements for a project subsystem are to be met by conformity with all relevant technical specifications for interoperability (TSIs), if any: reg 7(1)(a). However, in so far as the project subsystem is not subject to requirements by a relevant TSI, and in circumstances where: (1) there are no relevant TSIs (reg 7(2)(a)); or (2) a relevant TSI does not govern all elements of the project subsystem (reg 7(2)(b)); or (3) a derogation from conformity with the whole or part of a relevant TSI has been granted pursuant to reg 6 (see PARA 213 post) in respect of that subsystem (reg 7(2)(c)); or (4) the Competent Authority has determined under reg 5(8) (see PARA 212 post) that the whole or part of a relevant TSI does not apply to that subsystem (reg 7(2)(d)), the essential requirements for a project subsystem are to be met by conformity with the requirements of all relevant notified national technical rules, if any (reg 7(1)(b)). A project subsystem in relation to which a verification declaration has been drawn up is to be taken to meet the essential requirements in accordance with reg 7 unless there are reasonable grounds for believing that it does not so conform: reg 10(1). However, reg 10(1) does not apply in relation to the Safety Authority where a person fails or refuses to make available to the Safety Authority the documentation which he is required to retain by the verification assessment procedure applying to the project subsystem or pursuant to reg 11 (as amended) (see PARA 215 post), or a copy of that documentation: reg 10(2). For these purposes, 'notified national technical rules' means the standards, technical specifications and technical rules in use in the United Kingdom which have been notified to the Commission of the European Communities pursuant to Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) art 16(3) (added by Directive 2004/50/EC (OJ L164, 30.04.2004, p 114)) or Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) art 16(3) (substituted by Directive 2004/50/EC (OJ L164, 30.04.2004, p 114)): Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3). For the meaning of 'United Kingdom' see PARA 31 note 2 ante; and for the meaning of 'TSI' see PARA 210 note 5 ante.

19 Ibid reg 4(5)(a).

20 Ie the Commission of the European Communities: ibid reg 2(3).

21 Ibid reg 4(5)(b).

22 Ibid reg 4(6)(a). The text refers to a verification declaration that has been drawn up in accordance with reg 2(2) (as amended), Sch 8 (as amended) (as to which see PARA 210 note 5 ante): see reg 4(6)(a).

23 Ie in accordance with ibid reg 7 (as to which see note 18 supra): see reg 4(6)(b). As to the duty on the operator of an authorised system to ensure essential requirements are met see PARA 216 post.

24 Ibid reg 4(6)(b).

25 Ibid reg 4(6)(c).

26 Ibid reg 4(7)(a).

27 Ibid reg 4(7)(b).

28 Ie subject to the conditions in ibid reg 4(9) (as to which see note 29 infra): see reg 4(8).

29 Ibid reg 4(8). For the purposes of reg 4(8), a contract for the purchase of further items of rolling stock for construction to the same standards and specifications is to be taken to include an option for their purchase but only where the option: (1) was agreed at the time the contract was made (reg 4(9)(a)); and (2) is exercised by the contracting entity either: (a) within 24 months from the date of authorisation under reg 4(7) (as to which see the text and notes 26-27 supra) (reg 4(9)(b)(i)); or (b) within five years of the date the contract was made (reg 4(9)(b)(ii)), whichever is the earliest (reg 4(9)(b)).

UPDATE

211 Prohibition on unauthorised subsystems being placed in service

TEXT AND NOTES 1-11--SI 2006/397 reg 4A (deemed authorisation) and reg 4B (accessibility for people with reduced mobility) added: SI 2008/1746.

NOTE 17--Definition of 'project subsystem' amended: SI 2008/1746.

TEXT AND NOTES 22-25--SI 2006/397 reg 4(6) amended: SI 2008/1746.

TEXT AND NOTE 26--SI 2006/397 reg 4(7)(a) amended: SI 2008/1746.

NOTE 29--SI 2006/397 reg 4(9A) added: SI 2008/1746.

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212. Renewal or upgrading of subsystems.

The contracting entity¹ in relation to a project² for the renewal³ or upgrading⁴ of an existing structural subsystem⁵ must apply in writing⁶ to the Competent Authority⁷ for a decision as to whether an authorisation is required for that subsystem to be placed in service⁸. Such an application must be accompanied by the following information:

- 737 (1) a file setting out details of the project⁹;
- 738 (2) an assessment of whether and how the overall safety level of the subsystem concerned may be adversely affected by the works envisaged¹⁰;
- 739 (3) identification of any technical specification for interoperability (TSI)¹¹, or parts thereof, for which¹² derogations may or will be sought¹³;
- 740 (4) an indication of any TSI, or parts thereof, which it is proposed should not apply if the Competent Authority determines that the subsystem requires authorisation¹⁴.

The Competent Authority may give notice in writing to the applicant requiring the applicant to provide additional information that the Competent Authority considers necessary in order to make a decision¹⁵; and the applicant must provide the Competent Authority with such additional information¹⁶ as he is reasonably able to supply¹⁷. Where the applicant is unable to provide the information requested, he must give a written explanation¹⁸.

In making a decision as to the requirement for authorisation, factors to be taken into account by the Competent Authority must include the implementation strategy provided in any relevant TSI¹⁹ and the size of the proposed works²⁰. Except where the Competent Authority and the Safety Authority²¹ are the same person, the Competent Authority is not to decide authorisation is not required unless it has consulted the Safety Authority²². If it appears to the Competent Authority that the proposed works may adversely affect the overall safety of the relevant subsystem the Competent Authority must decide that the subsystem requires authorisation to be placed in service²³.

Where the Competent Authority determines that the subsystem requires an authorisation and the project subsystem²⁴ is part of the conventional TEN rail system²⁵: (a) the Competent Authority must²⁶ decide to what extent TSIs are to apply to the project subsystem²⁷; and (b) the Secretary of State²⁸ must notify that decision to the Commission²⁹ and other Member States³⁰.

1 For the meaning of 'contracting entity' see PARA 211 note 15 ante.

2 For the meaning of 'project' see PARA 211 note 15 ante.

3 For the meaning of 'renewal' see PARA 211 note 5 ante.

4 For the meaning of 'upgrading' see PARA 211 note 4 ante.

5 For the meanings of 'structural subsystem' and 'subsystem' see PARA 210 note 5 ante.

6 As to the meaning of 'writing' see PARA 211 note 12 ante.

7 For the meaning of 'Competent Authority' see PARA 211 note 9 ante.

8 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 5(1). For the meaning of 'placed in service' see PARA 211 note 8 ante. As to the prohibition on unauthorised subsystems being placed in service see PARA 211 ante.

9 Ibid reg 5(2)(a).

10 Ibid reg 5(2)(b).

11 For the meaning of 'TSI' see PARA 210 note 5 ante.

12 Ie pursuant to the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 6 (as to which see PARA 213 post): see reg 5(2)(c).

13 Ibid reg 5(2)(c).

14 Ibid reg 5(2)(d).

15 Ibid reg 5(3).

16 Ie information requested under ibid reg 5(3) (see the text and note 15 supra): see reg 5(4).

17 Ibid reg 5(4).

18 Ibid reg 5(4).

19 Ibid reg 5(5)(a).

20 Ibid reg 5(5)(b).

21 For the meaning of 'Safety Authority' see PARA 211 note 7 ante.

22 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 5(6).

23 Ibid reg 5(7).

24 For the meaning of 'project subsystem' see PARA 211 note 17 ante.

25 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 5(8). For the meaning of 'conventional TEN rail system' see PARA 210 note 5 ante.

26 Ie subject to any derogations under ibid reg 6 (as to which see PARA 213 post): see reg 5(8)(a).

27 Ibid reg 5(8)(a).

28 As to the Secretary of State see PARA 35 ante.

29 Ie the Commission of the European Communities: Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3).

30 Ibid reg 5(8)(b). Except for the references to the European Communities in reg 2(3) (definition of 'Commission': see the text and note 29 supra) and in relation to the Official Journal, a reference to the European Community includes a reference to the EEA, and a reference to a Member State includes a reference to an EEA State: reg 2(4). For these purposes, 'EEA' means the European Economic Area (reg 2(5)(a)) and 'EEA State', in relation to any time, means a state which at that time is a Member State or any other state which at that time is a party to the EEA agreement, where 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183), as modified or supplemented from time to time (see the Interpretation Act 1978 s 5, Sch 1 (definitions added by the Legislative and Regulatory Reform Act 2006 s 26(1)); definitions applied by the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(5)(b) (substituted by SI 2007/3386)). For the meaning of 'Member State' see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

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213. Derogations from need to conform with technical specifications for interoperability.

The Competent Authority¹ may determine that, in the circumstances or cases specified in heads (1) to (5) below, the whole or part of a relevant technical specification for interoperability (TSI)² (including those relating to rolling stock³) does not apply in relation to a subsystem⁴ or interoperability constituent⁵ (a 'derogation')⁶. The circumstances and cases are:

- 741 (1) for a proposed new line, for the renewal⁷ or upgrading⁸ of an existing line, or for any element referred to in the general objective of either the High-Speed Directive⁹ or the Conventional Directive¹⁰, which is at an advanced stage of development or is the subject of a contract in the course of performance when the relevant TSI is published¹¹;
- 742 (2) for any project¹² concerning the renewal or upgrading of an existing line where the loading gauge, track gauge, space between tracks, or electrification voltage in the relevant TSI is not compatible with those of the existing line¹³;
- 743 (3) for a proposed new line or for the proposed renewal or upgrading of an existing line where the rail network is separated or isolated by the sea from the rail network of the rest of the Community¹⁴;
- 744 (4) for any proposed renewal, extension or upgrading of an existing line when the application of a relevant TSI would compromise the economic viability of the project or the compatibility of the rail system¹⁵;
- 745 (5) following an accident or natural disaster, where the conditions for the rapid restoration of the network do not economically or technically allow for partial or total application of a relevant TSI¹⁶.

However, the Competent Authority must not make a derogation from the application of a TSI or part of a TSI unless the Secretary of State¹⁷ has first:

- 746 (a) given notice of any intended derogation to the Commission¹⁸;
- 747 (b) forwarded a file to the Commission setting out the TSIs or parts of TSIs that are not to be applied¹⁹; and
- 748 (c) set out the specification that the Competent Authority wishes to apply to the subsystem or interoperability constituent²⁰.

Save for matters concerning the loading gauge and the track gauge, a derogation in relation to the circumstances or cases set out in head (2) above is to have no effect unless the derogation has been permitted by the Commission before commencement of the physical construction of the project in which the subsystem or interoperability constituent is to be used²¹. In the circumstances or cases set out in head (4) above, a derogation is to have no effect unless the derogation has been permitted by the Commission before commencement of the physical construction of the project in which the subsystem or interoperability constituent is to be used²².

1 For the meaning of 'Competent Authority' see PARA 211 note 9 ante.

2 For the meaning of 'TSI' see PARA 210 note 5 ante.

3 For the meaning of 'rolling stock' see PARA 210 note 5 ante.

4 For the meaning of 'subsystem' see PARA 210 note 5 ante.

5 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

6 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 6(1).

7 For the meaning of 'renewal' see PARA 211 note 5 ante.

8 For the meaning of 'upgrading' see PARA 211 note 4 ante.

9 The Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (see PARA 210 note 5 ante). The reference in the text is to any element referred to in art 1(1) (substituted by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)), which states that the aim of Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) is to establish the conditions to be met to achieve interoperability within the Community territory of the trans-European high-speed rail system as described in Annex I (as to which see PARA 210 note 5 ante): see art 1(1) (as so substituted). These conditions concern the design, construction, placing in service, upgrading, renewal, operation and maintenance of the parts of this system placed in service after 30 April 2004 (being the date of entry into force of art 1(1) (as substituted)) as well as the qualifications and health and safety conditions of the staff who contribute to its operation: see art 1(1). As to the meaning of references to 'Community' see PARA 212 note 30 ante.

10 The Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (see PARA 210 note 5 ante). The reference in the text is to any element referred to in art 1(1) (substituted by Directive 2004/50/EC (OJ L164, 30.04.2004, p 114)), which states that Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) sets out to establish the conditions to be met to achieve interoperability within the Community territory of the trans-European conventional rail system as described in Annex I (as to which see PARA 210 note 5 ante): see art 1(1) (as so substituted). These conditions concern the design, construction, placing in service, upgrading, renewal, operation and maintenance of the parts of this system placed in service after 30 April 2004 (being the date of entry into force of art 1(1) (as substituted)) as well as the professional qualifications and health and safety conditions of the staff who contribute to its operation and maintenance: see art 1(1).

11 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 6(2)(a).

12 For the meaning of 'project' see PARA 211 note 15 ante.

13 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 6(2)(b).

14 Ibid reg 6(2)(c).

15 Ibid reg 6(2)(d).

16 Ibid reg 6(2)(e).

17 As to the Secretary of State see PARA 35 ante.

18 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 6(3)(a). 'Commission' means the Commission of the European Communities: reg 2(3).

19 Ibid reg 6(3)(b).

20 Ibid reg 6(3)(c).

21 Ibid reg 6(4).

22 Ibid reg 6(5).

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214. Duties on a contracting entity.

The contracting entity¹ in relation to a project subsystem² must: (1) appoint a notified body³ to act in carrying out the verification assessment procedure⁴; and (2) ensure that a notified body (whether that originally appointed or another) continues to be appointed until authorisation for the subsystem⁵ is given or refused⁶. The appointment of a notified body⁷ must be made either before completion of the design stage of the project subsystem⁸ or before commencement of the manufacture stage of the project subsystem⁹, whichever is the earlier¹⁰. The contracting entity must draw up a verification declaration¹¹ in relation to that project subsystem where:

- 749 (1) he is satisfied the essential requirements¹² are met¹³ (including interfaces with the rail system on which it will be placed in service)¹⁴;
- 750 (2) the appropriate verification assessment procedure has been carried out by a notified body¹⁵;
- 751 (3) a certificate of verification¹⁶ has been drawn up by a notified body in accordance with the required procedures¹⁷; and
- 752 (4) a technical file has been prepared containing the required information and documents¹⁸.

1 For the meaning of 'contracting entity' see PARA 211 note 15 ante.

2 For the meaning of 'subsystem' see PARA 210 note 5 ante; and for the meaning of 'project subsystem' see PARA 211 note 17 ante.

3 For the meaning of 'notified body' see PARA 223 note 2 post.

4 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 8(1)(a). For the meaning of 'verification assessment procedure' see PARA 211 note 8 ante.

5 *Ie* under *ibid* reg 4 (as to which see PARA 211 ante): see reg 8(1)(b).

6 *Ibid* reg 8(1)(b).

7 *Ie* under *ibid* reg 8(1) (see the text and notes 1-6 *supra*): see reg 8(2).

8 *Ibid* reg 8(2)(a).

9 *Ibid* reg 8(2)(b).

10 *Ibid* reg 8(2). Regulation 8 is subject to transitional provisions for projects which on 2 April 2006 had reached the design stage: see reg 15(1), (2).

11 For the meaning of 'verification declaration' see PARA 211 note 15 ante.

12 For the meaning of 'essential requirements' see PARA 210 note 5 ante.

13 *Ie* in accordance with the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 7 (see PARA 211 note 18 ante): see reg 8(3)(a).

14 *Ibid* reg 8(3)(a). For the meaning of 'placed in service' see PARA 211 note 8 ante.

15 Ibid reg 8(3)(b). The text refers to the appropriate verification assessment procedure carried out for these purposes in accordance with reg 9: see reg 8(3)(b). Accordingly, the appropriate verification assessment procedure in relation to a project subsystem for the purpose of reg 8(3)(b) is: (1) in so far as that subsystem is required to conform with all or part of a technical specification for interoperability (TSI), the procedures specified in the TSI (or part of the TSI) with which that subsystem is required to conform (reg 9(1)(a)); (2) in so far as that subsystem is required to conform with notified national technical rules, such procedures as are reasonably appropriate to assess that project subsystem against the notified national technical rules with which it is required to conform (reg 9(1)(b)); and (3) the procedures set out in reg 2(2) (as amended), Sch 9 (as substituted) (verification procedure for subsystems: see PARA 210 note 5 ante) (reg 9(1)(c)). The notified body must compile the technical file and verify the interface between the project subsystem and the rail system in which it will be placed in service: reg 9(2). Regulation 9 is subject to transitional provisions for projects which on 2 April 2006 had reached the design stage: see reg 15(1), (3). For the meaning of 'TSI' see PARA 210 note 5 ante; for the meaning of 'technical file' see PARA 211 note 13 ante; and for the meaning of 'notified national technical rules' see PARA 211 note 18 ante.

16 For the meaning of 'certificate of verification' see PARA 211 note 14 ante.

17 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 8(3)(c) (amended by SI 2007/3386). The text refers to the procedures required by the Railways (Interoperability) Regulations 2006, SI 2006/397, Sch 9 (as substituted) (verification procedure for subsystems: see PARA 210 note 5 ante): see reg 8(3)(c) (as so amended).

18 Ibid reg 8(3)(d). The text refers to the information and documents specified in reg 11(1)(a)-(g) (as amended) (as to which see PARA 215 post): see reg 8(3)(d).

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215. Technical file and retention of documents.

The technical file¹ must contain:

- 753 (1) the items required by the appropriate provisions of the verification procedure for subsystems², including the certificate of verification³;
- 754 (2) documents relating to the conditions and limits of use of the project subsystem⁴;
- 755 (3) documents relating to the characteristics of the project subsystem⁵;
- 756 (4) manuals and instructions relating to the servicing, constant or routine monitoring, adjustment, maintenance and configuration controls of the project subsystem⁶;
- 757 (5) documentation or records demonstrating compliance with the notified national technical rules⁷ where these are used⁸;
- 758 (6) documentation or records of notifications to the Commission⁹ identifying to what extent technical specifications for interoperability (TSIs)¹⁰ apply to the project subsystem¹¹;
- 759 (7) documentation or records of notifications to the Commission in relation to a derogation¹²; and
- 760 (8) documents added to the file pursuant to head (i) or head (ii) below¹³.

From the time a project subsystem which has been duly authorised¹⁴ is placed in service¹⁵ until it is permanently withdrawn from service¹⁶, the contracting entity¹⁷ must¹⁸: (a) keep the technical file (including the certificate of verification) and the verification declaration¹⁹; and (b) provide a copy of the technical file (including the certificate of verification) to any Member State that requests one²⁰. The contracting entity must ensure that after the technical file has been lodged with it by the notified body²¹: (i) any alterations made to the project subsystem are documented²²; and (ii) the documentation and any maintenance manuals in relation to the project subsystem are added to and kept as part of the technical file²³.

Where the contracting entity is not the owner²⁴ of the project subsystem when it is authorised²⁵, he must within 60 days of the date of authorisation transfer the documents referred to in heads (a) and (b) above to the owner of that subsystem, and thereafter, for the purposes of retaining and maintaining the currency of the documents²⁶, the owner is to be regarded as the contracting entity²⁷. Where the owner of the project subsystem disposes of his interest in it, he must within 60 days of the disposal transfer the documents referred to in heads (a) and (b) above to the person acquiring that interest, and thereafter, both for these purposes and for the purposes of retaining and maintaining the currency of the documents²⁸, the person acquiring that interest is to be regarded as the contracting entity²⁹.

1 For the meaning of 'technical file' see PARA 211 note 13 ante.

2 I.e. the items required by the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2) (as amended), Sch 9 Pt 4 (as substituted) (as to which see PARA 210 note 5 ante): see reg 11(1)(a) (as amended: see note 3 infra).

- 3 Ibid reg 11(1)(a) (amended by SI 2007/3386). For the meaning of 'certificate of verification' see PARA 211 note 14 ante.
- 4 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(1)(b). For the meaning of 'subsystem' see PARA 210 note 5 ante; and for the meaning of 'project subsystem' see PARA 211 note 17 ante.
- 5 Ibid reg 11(1)(c).
- 6 Ibid reg 11(1)(d).
- 7 For the meaning of 'notified national technical rules' see PARA 211 note 18 ante.
- 8 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(1)(e).
- 9 I.e. pursuant to ibid reg 5(8) (as to which see PARA 212 ante): see reg 11(1)(f). 'Commission' means the Commission of the European Communities: reg 2(3).
- 10 For the meaning of 'TSI' see PARA 210 note 5 ante.
- 11 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(1)(f).
- 12 Ibid reg 11(1)(g). The text refers to documentation or records of notifications in relation to a derogation pursuant to reg 6 (as to which see PARA 213 ante): see reg 11(1)(g).
- 13 Ibid reg 11(1)(h).
- 14 I.e. under ibid reg 4 (as to which see PARA 211 ante): see reg 11(2) (as amended: see note 18 infra).
- 15 For the meaning of 'placed in service' see PARA 211 note 8 ante.
- 16 I.e. whether such service is in the United Kingdom or another Member State: see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(2) (as amended: see note 18 infra). For the meaning of 'United Kingdom' see PARA 31 note 2 ante. As to the meaning of references to 'Member State' see PARA 212 note 30 ante.
- 17 For the meaning of 'contracting entity' see PARA 211 note 15 ante.
- 18 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(2) (amended by SI 2007/3386).
- 19 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(2)(a) (as amended: see note 18 supra). The contracting entity for the purpose of reg 11(2) (as amended) (which may not be the contracting entity *per se*: see the text and notes 24-29 infra) must make the technical file available to the Safety Authority on demand: reg 11(6). For the meaning of 'Safety Authority' see PARA 211 note 7 ante.
- 20 Ibid reg 11(2)(b) (as amended: see note 18 supra). For the meaning of 'verification declaration' see PARA 211 note 15 ante.
- 21 Ibid reg 11(3). For the meaning of 'notified body' see PARA 223 note 2 post. The contracting entity for the purpose of reg 11(3) (which may not be the contracting entity *per se*: see the text and notes 24-29 infra) must make the technical file available to the Safety Authority on demand: reg 11(6).
- 22 Ibid reg 11(3)(a).
- 23 Ibid reg 11(3)(b). See note 21 supra.
- 24 For these purposes, 'owner', in relation to a structural subsystem, means any person who has an estate or interest in, or right over that subsystem, and whose permission is needed before another may use it: ibid reg 2(3). For the meaning of 'structural subsystem' see PARA 210 note 5 ante.
- 25 See note 14 supra.
- 26 I.e. for the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(2)-(3) (as amended) (see the text and notes 14-23 supra).
- 27 Ibid reg 11(4).
- 28 See note 26 supra.

29 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 11(5).

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216. Duty on operator to ensure essential requirements are met.

Where a project subsystem¹ is in use on, or is part of, the high-speed rail system² or the conventional TEN rail system³ pursuant to an authorisation⁴, the operator⁵ of the project subsystem must ensure that the project subsystem, notwithstanding any alterations, is operated and maintained⁶:

- 761 (1) in accordance with the essential requirements⁷ relevant to that subsystem⁸;
- 762 (2) subject to head (3) below, in conformity with the technical specifications for interoperability (TSIs)⁹ and notified national technical rules¹⁰ against which the subsystem was assessed for that authorisation¹¹;
- 763 (3) where a TSI and notified national technical rule referred to in head (2) above has been varied and replacement parts which conform to the TSI or notified national technical rule against which it was assessed are no longer available, in conformity with that varied TSI or rule¹²; and
- 764 (4) in conformity with any functional TSI applying to that subsystem¹³.

1 For the meaning of 'project subsystem' see PARA 211 note 17 ante; and for the meaning of 'subsystem' see PARA 210 note 5 ante.

2 For the meaning of 'high-speed rail system' see PARA 210 note 5 ante.

3 For the meaning of 'conventional TEN rail system' see PARA 210 note 5 ante.

4 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 12(1). The text refers to an authorisation under reg 4 (as to which see PARA 211 ante): see reg 12(1).

5 For these purposes, 'operator', in relation to the use of an interoperability constituent or project subsystem, means the infrastructure manager or railway undertaking having the management of that interoperability constituent or project subsystem for the time being: *ibid* reg 2(3). For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

6 *Ibid* reg 12(2).

7 For the meaning of 'essential requirements' see PARA 210 note 5 ante.

8 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 12(2)(a).

9 For the meaning of 'TSI' see PARA 210 note 5 ante.

10 For the meaning of 'notified national technical rules' see PARA 211 note 18 ante.

11 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 12(2)(b).

12 *Ibid* reg 12(2)(c).

13 *Ibid* reg 12(2)(d). For these purposes, 'functional TSI' means a TSI applying to a functional subsystem: reg 2(3). For the meaning of 'functional subsystem' see PARA 210 note 5 ante.

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217. Fees payable to the Safety Authority and to the Competent Authority.

A person applying to the Safety Authority¹ for authorisation of a project subsystem² is liable to pay such fee to the Safety Authority as the Safety Authority may charge in respect of the Safety Authority's work in relation to the application³. The fee thus payable: (1) must not exceed the sum of the costs reasonably incurred by the Safety Authority in carrying out the work in relation to the application⁴; and (2) must be payable within 30 days from the date of the invoice that the Safety Authority has sent or given to the person who is required to pay the fees, such invoice to include a statement of the work done and the costs reasonably incurred including the period to which the statement relates⁵. A fee payable to the Safety Authority in this way is recoverable as a civil debt⁶; and failure to pay such a fee does not constitute an offence under the interoperability provisions⁷.

The Competent Authority⁸ may charge such reasonable fee in connection with, or incidental to, carrying out its functions under the provisions which govern decisions as to whether authorisation is required when renewing or upgrading a structural subsystem⁹, or in determining whether derogations apply¹⁰, as it may determine¹¹.

1 For the meaning of 'Safety Authority' see PARA 211 note 7 ante.

2 I.e. authorisation under the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 4 (as to which see PARA 211 ante); see reg 13(1). Regulation 13 does not apply in relation to the Channel Tunnel system and the Intergovernmental Commission: reg 13(5). For the meanings of 'Channel Tunnel system' and 'Intergovernmental Commission' see PARA 211 note 7 ante. For the meaning of 'project subsystem' see PARA 211 note 17 ante; and for the meaning of 'subsystem' see PARA 210 note 5 ante.

3 Ibid reg 13(1). See note 2 supra.

4 Ibid reg 13(2)(a). See note 2 supra.

5 Ibid reg 13(2)(b). See note 2 supra.

6 Ibid reg 13(3). See note 2 supra.

7 Ibid reg 13(4). See note 2 supra.

8 For the meaning of 'Competent Authority' see PARA 211 note 9 ante.

9 I.e. the Competent Authority's functions under the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 5 (as to which see PARA 212 ante): see reg 14(1). For the meaning of 'structural subsystem' see PARA 210 note 5 ante; for the meaning of 'upgrading' see PARA 211 note 4 ante; and for the meaning of 'renewal' see PARA 211 note 5 ante.

10 I.e. the Competent Authority's functions under ibid reg 6 (as to which see PARA 213 ante): see reg 14(1).

11 Ibid reg 14(1). Regulation 14 does not apply in relation to the Channel Tunnel system and the Intergovernmental Commission: reg 14(2).

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(c) Interoperability Constituents

218. EC declaration of conformity or of suitability for use.

An EC declaration of conformity or an EC declaration of suitability for use ('EC declaration of conformity or suitability for use')¹ is a declaration drawn up by the relevant person² in accordance with the requirements relating to the conformity and suitability for use of interoperability constituents³, and which indicates that the interoperability constituent satisfies the requirements⁴:

- 765 (1) of such European specifications⁵ as have been published in the Official Journal that are relevant to the interoperability constituent⁶;
- 766 (2) of such technical specifications for interoperability (TSIs) that are relevant to the interoperability constituent⁷;
- 767 (3) where a TSI relevant to the interoperability constituent requires compliance with a European specification that has not been published in the Official Journal, of the latest version of that draft European specification if so required by the TSI⁸.

An interoperability constituent in relation to which an EC declaration of conformity or suitability for use has been drawn up must be taken to:

- 768 (a) meet such of the essential requirements as relate to an interoperability constituent of that type⁹; and
- 769 (b) conform to such of the TSIs, European specifications or draft European specifications as required under heads (1) to (3) above¹⁰,

unless there are reasonable grounds for believing that it does not so conform¹¹.

1 For these purposes, 'EC declaration of conformity or suitability for use' has the meaning given in the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 16 (see the text and notes 2-8 infra) for an EC declaration of conformity or an EC declaration of suitability for use, as the case may be: reg 2(3).

2 For these purposes, 'relevant person' means a person specified in *ibid* reg 19(2) or reg 19(3) (as to which see PARA 220 post): reg 16(2).

3 *Ie* in accordance with the requirements of *ibid* reg 2(2), Sch 7 (conformity and suitability for use of interoperability constituents: see PARA 210 note 5 ante): see reg 16(1). For the meaning of 'interoperability constituent' see PARA 210 note 5 ante. As to the improper drawing up of an EC declaration of conformity see PARA 230 post.

4 *Ibid* reg 16(1).

5 For these purposes, 'European specification' means a common technical specification, a European technical approval or a British standard implementing a European standard; 'common technical specification' means a technical specification, drawn up in accordance with a procedure recognised by the Member States with a view to uniform application in all Member States which has been published in the Official Journal and is in force, and includes a technical specification for interoperability (TSI); 'European technical approval' means an approval of the fitness of a product for a particular use given by an approval body designated for the purpose

by a Member State following a technical assessment of whether the product fulfils all essential requirements for such a product, having regard to the inherent characteristics of the product and any such defined conditions of application and use as are provided for in any Council Directive applicable to the product; 'British standard implementing a European standard' means a European standard transposed into a British standard by the British Standards Institution; and 'European standard' means a standard approved by the European Committee for Standardisation or by the European Committee for Electrotechnical Standardisation as a European Standard or a Harmonisation Document, according to the Common Rules of those organisations or by the European Telecommunications Standards Institute according to its own rules as a European Telecommunications Standard: *ibid* reg 2(3). For the meaning of 'TSI' see PARA 210 note 5 ante; and for the meaning of 'essential requirements' see PARA 210 note 5 ante. As to the meaning of references to 'Member State' see PARA 212 note 30 ante.

6 *Ibid* reg 16(1)(a).

7 *Ibid* reg 16(1)(b).

8 *Ibid* reg 16(1)(c).

9 *Ibid* reg 17(1)(a).

10 *Ibid* reg 17(1)(b).

11 *Ibid* reg 17(1). However, reg 17(1) does not apply to the Safety Authority where a person fails or refuses to make available to the Safety Authority the documentation which he is required to retain by any of the conformity or suitability for use assessment procedures which apply to the interoperability constituent in question (or a copy of that documentation): reg 17(2). For these purposes, 'conformity or suitability for use assessment procedures' means the procedures specified in reg 18 (as to which see PARA 219 post): reg 2(3). For the meaning of 'Safety Authority' see PARA 211 note 7 ante.

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219. Assessment procedure for interoperability constituents.

The appropriate conformity or suitability for use assessment procedure¹ for an interoperability constituent² must be carried out by a notified body³ in accordance with: (1) the procedures (if any) specified in any technical specifications for interoperability (TSIs)⁴ with which the interoperability constituent must comply⁵; (2) the procedures (if any) specified in any European specifications⁶ with which the interoperability constituent must comply⁷; (3) any relevant procedures set out in the provisions which govern the conformity and suitability for use of interoperability constituents⁸.

1 For the meaning of 'conformity or suitability for use assessment procedure' see PARA 218 note 11 ante.

2 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

3 For the meaning of 'notified body' see PARA 223 note 2 post. As to enforcement see PARA 228 et seq post.

4 For the meaning of 'TSI' see PARA 210 note 5 ante.

5 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 18(a).

6 For the meaning of 'European specification' see PARA 218 note 5 ante.

7 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 18(b).

8 Ibid reg 18(c). Head (3) in the text refers to any relevant procedures set out in reg 2(2), Sch 7 (conformity and suitability for use of interoperability constituents: see PARA 210 note 5 ante): see reg 18(c).

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220. Prohibition on placing interoperability constituents on the market.

No person may place an interoperability constituent¹ on the market² with a view to its use on the trans-European high-speed rail system or trans-European conventional rail system, as the case may be, unless³:

- 770 (1) the interoperability constituent meets the essential requirements⁴ that are relevant to an interoperability constituent of that type⁵;
- 771 (2) the appropriate procedure for assessment of the conformity or suitability for use⁶ of the interoperability constituent has been carried out⁷; and
- 772 (3) an EC declaration of conformity or suitability for use⁸ in relation to that interoperability constituent has been drawn up⁹.

An EC declaration of conformity or suitability for use must be drawn up by the manufacturer of the interoperability constituent or his authorised representative established in the Community¹⁰. However, where such a declaration has not been drawn up in this way¹¹, an EC declaration of conformity or suitability for use must be drawn up by any person¹²: (a) who places that interoperability constituent on the market¹³; or (b) uses that interoperability constituent, or any part of it, in any interoperability constituent that he is manufacturing or assembling, or in any project subsystem¹⁴ that he is constructing, upgrading¹⁵ or renewing¹⁶.

Notwithstanding these requirements, nothing in the interoperability provisions¹⁷ precludes any person: (i) from drawing up an EC declaration of conformity or suitability for use at any time in relation to an interoperability constituent which has been placed on the market, provided that person has followed the requirements of those provisions in relation to that interoperability constituent¹⁸; or (ii) from placing on the market relating to the trans-European high-speed rail system or trans-European conventional rail system an interoperability constituent that has successfully completed all the requirements of any scheme in force in another Member State¹⁹ in so far as relating to that rail system²⁰.

Where a person draws up an EC declaration of conformity or suitability for use in relation to an interoperability constituent and that interoperability constituent is subject to other requirements pursuant to a European Community Directive, the person who draws up the EC declaration of conformity or suitability for use must state in the declaration whether or not the interoperability constituent in question meets those other requirements²¹.

1 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

2 For these purposes, 'placed on the market' means making an interoperability constituent available for purchase with a view to its use on the trans-European high-speed rail system or the trans-European conventional rail system, as the case may be; and cognate expressions are to be construed accordingly: Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3). Nothing in the Railways (Interoperability) Regulations 2006, SI 2006/397 is to preclude a person from placing an interoperability constituent on the market for a purpose other than use on the trans-European high-speed rail system or the trans-European conventional rail system: reg 19(5). For the meanings of 'trans-European high-speed rail system' and 'trans-European conventional TEN rail system' see PARA 210 note 5 ante.

- 3 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 19(1). As to enforcement see PARA 228 et seq post.
- 4 For the meaning of 'essential requirements' see PARA 210 note 5 ante.
- 5 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 19(1)(a).
- 6 For the meaning of 'conformity or suitability for use assessment procedure' see PARA 218 note 11 ante. As to the assessment procedure for interoperability constituents see PARA 219 ante.
- 7 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 19(1)(b).
- 8 For the meaning of 'EC declaration of conformity or suitability for use' see PARA 218 note 1 ante.
- 9 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 19(1)(c).
- 10 Ibid reg 19(2). As to the meaning of references to the 'Community' see PARA 212 note 30 ante.
- 11 Ie where an EC declaration of conformity or suitability for use has not been drawn up by the manufacturer or his authorised representative established in the Community: see ibid reg 19(3).
- 12 Ibid reg 19(3).
- 13 Ibid reg 19(3)(a).
- 14 For the meaning of 'project subsystem' see PARA 211 note 17 ante; and for the meaning of 'subsystem' see PARA 210 note 5 ante.
- 15 For the meaning of 'upgrading' see PARA 211 note 4 ante.
- 16 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 19(3)(b). For the meaning of 'renewal' see PARA 211 note 5 ante.
- 17 Ie the Railways (Interoperability) Regulations 2006, SI 2006/397: see reg 21.
- 18 Ibid reg 21.
- 19 Ie for the purpose of implementing Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (as amended) (the 'High-Speed Directive': see PARA 210 note 5 ante) or Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (as amended) (the 'Conventional Directive': see PARA 210 note 5 ante). As to the meaning of references to 'Member State' see PARA 212 note 30 ante.
- 20 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 22.
- 21 Ibid reg 19(4).

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221. Duties on operators.

The operator¹ of any interoperability constituent² that is in use on, or is part of, the high-speed rail system³ or the conventional TEN rail system⁴, must ensure that while it is so in use it is:

- 773 (1) correctly installed for the purpose for which it is intended to be used⁵;
- 774 (2) not used for any purpose other than the purpose for which it was designed⁶;
and
- 775 (3) maintained in an efficient state, effective working order and good repair⁷.

1 For the meaning of 'operator' see PARA 216 note 5 ante.

2 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

3 For the meaning of 'high-speed rail system' see PARA 210 note 5 ante.

4 For the meaning of 'conventional TEN rail system' see PARA 210 note 5 ante.

5 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 20(a).

6 Ibid reg 20(b).

7 Ibid reg 20(c).

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222. Notification to the Commission of incorrect declaration.

Where it appears to the Safety Authority¹ that an interoperability constituent² in relation to which an EC declaration of conformity or suitability for use³ has been drawn up fails to meet the essential requirements⁴ relating to it, it must forthwith give notice of that fact in writing to the Commission⁵, and where appropriate other Member States⁶. That notice must specify: (1) the steps taken to prohibit or restrict the use of that interoperability constituent⁷; (2) the reasons for taking those steps⁸; and (3) any measures taken against a person who drew up the declaration⁹.

1 For the meaning of 'Safety Authority' see PARA 211 note 7 ante.

2 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

3 For the meaning of 'EC declaration of conformity or suitability for use' see PARA 218 note 1 ante.

4 For the meaning of 'essential requirements' see PARA 210 note 5 ante.

5 I.e. the Commission of the European Communities: Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3).

6 Ibid reg 23(1). As to the meaning of references to 'Member State' see PARA 212 note 30 ante.

7 Ibid reg 23(2)(a).

8 Ibid reg 23(2)(b).

9 Ibid reg 23(2)(c).

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(d) Notified Bodies

223. Appointment of notified bodies by the Secretary of State.

The Secretary of State¹ may from time to time appoint such persons as he thinks fit to be notified bodies² for the purposes of the interoperability provisions³. However, he must not so appoint any person⁴ unless he is satisfied that the person is capable of meeting the minimum criteria which must be taken into account by the Member States when notifying bodies⁵. An appointment⁶ is for such period as may be specified in the appointment⁷.

An appointment: (1) must relate to such descriptions of structural subsystems⁸ and interoperability constituents of the trans-European high-speed rail system⁹ or trans-European conventional rail system¹⁰ as the Secretary of State may specify¹¹; and (2) must be made subject to such conditions as the Secretary of State may specify, including such conditions as are to apply upon or following termination of the appointment¹².

An appointment terminates:

- 776 (a) upon the expiry of any period specified in the appointment¹³;
- 777 (b) upon the expiry of 90 days' notice in writing¹⁴ given by the notified body to the Secretary of State¹⁵; or
- 778 (c) on any date specified for the termination of the appointment¹⁶,

whichever is the earliest¹⁷. When the appointment of a notified body is terminated in accordance with heads (a) to (c) above, the Secretary of State may:

- 779 (i) give such directions as the Secretary of State considers appropriate, either to that notified body or to another notified body, for the purpose of making such arrangements as may be necessary or expedient for the determination of any matters which would, apart from the termination, have fallen to be determined by the notified body whose appointment has terminated¹⁸; and
- 780 (ii) without prejudice to the generality of head (i) above, authorise another notified body to take over the functions of the notified body whose appointment has terminated, in respect of such matters as the Secretary of State may specify¹⁹.

The Secretary of State must notify in writing the Commission and other Member States of the appointment or termination of appointment, as the case may be, of a notified body²⁰.

Where it appears to the Secretary of State that a notified body appointed by another Member State fails to meet the criteria set out in the minimum criteria which must be taken into account by the Member States when notifying bodies²¹, he must notify the Article 21 Committee²² of that fact forthwith²³.

1 As to the Secretary of State see PARA 35 ante.

2 For the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, a notified body is a body which has been:

- 193 (1) appointed by the Strategic Rail Authority as a notified body and notified to the Commission and other Member States pursuant to the Railways (Interoperability) (High-Speed) Regulations 2002, SI 2002/1166, reg 5 (now revoked) (Railways (Interoperability) Regulations 2006, SI 2006/397, reg 24(a));
- 194 (2) appointed by the Secretary of State as a notified body and notified to the Commission and other Member States pursuant to reg 25 (as to which see the text and notes 1 supra, 3-23 infra) (reg 24(b)); or
- 195 (3) appointed by a Member State other than the United Kingdom, and notified by the Member State concerned to the Commission and the other Member States pursuant to Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (as amended) (the 'High-Speed Directive': see PARA 210 note 5 ante) art 20(1) or Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (as amended) (the 'Conventional Directive': see PARA 210 note 5 ante) art 20(1) (Railways (Interoperability) Regulations 2006, SI 2006/397, reg 24(c)).

Accordingly, for the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, 'notified body' has the meaning given in reg 24: reg 2(3). 'Commission' means the Commission of the European Communities: reg 2(3). Notified bodies appointed by the Strategic Rail Authority or the Secretary of State must consult other notified bodies appointed pursuant to the High-Speed Directive or the Conventional Directive throughout the European Community in a notified bodies coordination group in relation to the procedures for assessing conformity or suitability for use of interoperability constituents and the verification assessment procedure for subsystems: reg 28. For the meaning of 'United Kingdom' see PARA 31 note 2 ante; for the meanings of 'interoperability constituent' and 'subsystem' see PARA 210 note 5 ante; for the meaning of 'verification assessment procedure' see PARA 211 note 8 ante; and for the meaning of 'conformity or suitability for use assessment procedure' see PARA 218 note 11 ante. As to the meaning of references to 'Community' and 'Member State' see PARA 212 note 30 ante. As to the assessment procedure for interoperability constituents see PARA 219 ante; and as to the establishment and abolition of the Strategic Rail Authority see PARA 46 ante.

3 Ibid reg 25(1). The text refers to the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397: see reg 25(1).

4 Ie as a notified body in accordance with ibid reg 25(1) (see the text and notes 1-3 supra): see reg 25(2).

5 Ibid reg 25(2). The text refers to the criteria specified in reg 2(2), Sch 10 (minimum criteria which must be taken into account by the Member States when notifying bodies: see PARA 210 note 5 ante): see reg 25(2).

6 Ie under ibid reg 25: see reg 25(4).

7 Ibid reg 25(4). The period of appointment is subject to reg 25(5)(b) (see head (b) in the text), reg 25(5)(c) (see head (c) in the text) and reg 25(6) (see note 16 infra): see reg 25(4).

8 For the meaning of 'structural subsystem' see PARA 210 note 5 ante.

9 For the meaning of 'trans-European high-speed rail system' see PARA 210 note 5 ante.

10 For the meaning of 'trans-European conventional rail system' see PARA 210 note 5 ante.

11 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 25(3)(a).

12 Ibid reg 25(3)(b).

13 Ibid reg 25(5)(a). The text refers to any period specified in the appointment pursuant to reg 25(4) (as to which see the text and notes 6-7 supra): see PARA 25(5)(a).

14 As to the meaning of 'writing' see PARA 211 note 12 ante.

15 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 25(5)(b).

16 Ibid reg 25(5)(c). The text refers to termination of the appointment in accordance with reg 25(6): see reg 25(5)(c). If at any time it appears to the Secretary of State in relation to a notified body appointed by him or the Strategic Rail Authority that: (1) any of the conditions of the appointment of that notified body are not being complied with (reg 25(6)(a)); or (2) the notified body is not meeting the criteria specified in Sch 10 (minimum criteria which must be taken into account by the Member States when notifying bodies: see PARA 210 note 5

ante) (reg 25(6)(b)), the Secretary of State may, by notice in writing to that notified body, specify a date on which the appointment of that person as a notified body is to terminate (reg 25(6)). Where the Secretary of State is minded to terminate the appointment of a person as a notified body pursuant to the grounds specified in reg 25(6), he must: (a) give notice in writing to the notified body of the reasons why he is minded to do so (reg 25(7)(a)); (b) give the notified body the opportunity to make representations within a period of 14 days beginning with the day on which such notice is given (reg 25(7)(b)); and (c) consider any representations made within that period by the notified body before making his decision (reg 25(7)(c)).

17 Ibid reg 25(5).

18 Ibid reg 25(8)(a).

19 Ibid reg 25(8)(b).

20 Ibid reg 25(9).

21 Ie the criteria set out in ibid Sch 10 (minimum criteria which must be taken into account by the Member States when notifying bodies: see PARA 210 note 5 ante): see reg 25(10).

22 For these purposes, 'Article 21 Committee' means the Committee set up pursuant to Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) (the 'High-Speed Directive': see PARA 210 note 5 ante) art 21 (substituted by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)): Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3).

23 Ibid reg 25(10).

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224. Requirement on notified bodies to carry out functions, etc.

Where a contracting entity¹, manufacturer or his authorised representative established in the Community², or other interested person³ so requests in writing⁴, a notified body⁵ must carry out in relation to a structural subsystem⁶ or interoperability constituent⁷ the procedures and checks (including, where so provided as part of those procedures and checks, surveillance) required to ensure that the contracting entity, manufacturer or his authorised representative established in the Community, or other interested person, as the case may be, duly fulfils the obligations arising from the appropriate verification assessment procedure⁸ for a subsystem or the appropriate conformity or suitability for use assessment procedure⁹ for an interoperability constituent¹⁰. However, a notified body is not required to comply with such a request if:

- 781 (1) the request relates to a subsystem or interoperability constituent of a description to which the appointment of that body does not relate¹¹;
- 782 (2) to do so would place that body in breach of a condition of its appointment¹²;
- 783 (3) the documents submitted to it in relation to carrying out such functions are not in a language acceptable to that body¹³;
- 784 (4) the person making the request has not submitted with its request the amount of the fee which that body requires to be submitted with the request¹⁴; or
- 785 (5) at the time of the request the notified body reasonably believes that it will be unable to commence the required work in relation to that request within three months of receiving it¹⁵.

Where a notified body is minded to decline to draw up a certificate of verification¹⁶ or an ISV¹⁷ in relation to a project subsystem, or is minded to decline to confirm that an EC declaration of verification or suitability for use¹⁸ can be drawn up in respect of an interoperability constituent, it must¹⁹:

- 786 (a) give notice in writing to the applicant of the reasons why it is minded to do so²⁰;
- 787 (b) give the applicant the opportunity to make representations within a period of 28 days beginning with the day on which such notice is given²¹; and
- 788 (c) consider any representations made within that period by the applicant before making its decision²².

A notified body must not draw up a certificate of verification in relation to a project subsystem unless satisfied that the subsystem conforms to such of the technical specifications for interoperability (TSIs)²³ or notified national technical rules²⁴ as are required²⁵; and a notified body must not confirm that an EC declaration of conformity or suitability for use can be drawn up in respect of an interoperability constituent unless satisfied that that constituent conforms to such of the European specifications²⁶ or TSIs as are required²⁷.

1 For the meaning of 'contracting entity' see PARA 211 note 15 ante.

2 As to the meaning of references to 'Community' see PARA 212 note 30 ante.

- 3 For these purposes, 'interested person' means a person who is or expects to be subject to the duties imposed by the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 19(3) (as to which see PARA 220 ante): reg 26(3).
- 4 As to the meaning of 'writing' see PARA 211 note 12 ante.
- 5 For the meaning of 'notified body' see PARA 223 note 2 ante.
- 6 For the meanings of 'structural subsystem' and 'subsystem' see PARA 210 note 5 ante.
- 7 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.
- 8 For the meaning of 'verification assessment procedure' see PARA 211 note 8 ante.
- 9 For the meaning of 'conformity or suitability for use assessment procedure' see PARA 218 note 11 ante.
- 10 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 26(1).
- 11 Ibid reg 26(2)(a).
- 12 Ibid reg 26(2)(b).
- 13 Ibid reg 26(2)(c).
- 14 Ibid reg 26(2)(d). The text refers to the fee which the body requires to be submitted with the request pursuant to reg 29 (as to which see PARA 225 post): see reg 26(2)(d).
- 15 Ibid reg 26(2)(e).
- 16 For the meaning of 'certificate of verification' see PARA 211 note 14 ante.
- 17 For these purposes, 'ISV' means an intermediate statement of verification issued by a notified body in relation to the design stage or the production stage of a subsystem in accordance with the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2) (as amended), Sch 9 Pt 2 (as substituted) (see PARA 210 note 5 ante): reg 2(3) (definition added by SI 2007/3386).
- 18 For the meaning of 'EC declaration of conformity or suitability for use' see PARA 218 note 1 ante.
- 19 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 27(1) (amended by SI 2007/3386).
- 20 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 27(1)(a).
- 21 Ibid reg 27(1)(b).
- 22 Ibid reg 27(1)(c).
- 23 For the meaning of 'TSI' see PARA 210 note 5 ante.
- 24 For the meaning of 'notified national technical rules' see PARA 211 note 18 ante.
- 25 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 27(2) (amended by SI 2007/3386). The text refers to the requirements of the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 7 (see PARA 211 note 18 ante): see reg 27(2) (as so amended).
- 26 For the meaning of 'European specification' see PARA 218 note 5 ante.
- 27 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 27(3). The text refers to the requirements of reg 16 (see PARA 218 ante): see reg 27(3).

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225. Fees of notified bodies and of the Secretary of State.

A notified body¹ may charge such a fee in connection with, or incidental to, carrying out its functions under the interoperability provisions² as it may determine³. However, the fee so charged⁴ must not exceed the sum of the following:

- 789 (1) the costs incurred or to be incurred by the notified body in carrying out relevant work⁵; and
- 790 (2) an amount of profit which is reasonable in the circumstances, having regard to⁶: (a) the character and extent of the work carried out by the notified body on behalf of the person commissioning the work⁷; and (b) the commercial rate normally charged on account of profit for that work or similar work⁸.

The Secretary of State⁹ may charge such reasonable fee in connection with, or incidental to, carrying out his functions in relation to the appointment of notified bodies¹⁰ as he may determine¹¹.

1 For the meaning of 'notified body' see PARA 223 note 2 ante.

2 Ie under the Railways (Interoperability) Regulations 2006, SI 2006/397: see reg 29(1).

3 Ibid reg 29(1). The power in reg 29(1) includes the power to require the payment of a fee, or a reasonable estimate of the fee, in respect of the work commissioned in advance of carrying out that work: reg 29(3). However, unless the parties otherwise agree, an amount charged in accordance with reg 29(3) must not exceed a reasonable estimate of the fee for the work for the three months subsequent to the request for the advance payment: reg 29(4).

4 Ie pursuant to ibid reg 29(1) (see the text and notes 1-3 supra): see reg 29(2).

5 Ibid reg 29(2)(a).

6 Ibid reg 29(2)(b).

7 Ibid reg 29(2)(b)(i).

8 Ibid reg 29(2)(b)(ii).

9 As to the Secretary of State see PARA 35 ante.

10 Ie his functions under the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 25 (as to which see PARA 223 ante): see reg 30.

11 Ibid reg 30.

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(e) Registers

226. National vehicle register.

Before a rolling stock¹ vehicle for which there is a requirement for authorisation² is placed in service³, a contracting entity⁴ in relation to such a vehicle (or its owner⁵) must apply to the registration body⁶ for it to assign an ID code⁷.

The registration body must assign an ID code to each rolling stock vehicle for which an application is made⁸ and maintain a register of such rolling stock vehicles (the 'National Vehicle Register')⁹. The National Vehicle Register must contain particulars in respect of each rolling stock vehicle which is duly authorised¹⁰, including¹¹:

- 791 (1) the ID code assigned to the vehicle¹²;
- 792 (2) particulars of the verification declaration¹³ and the contracting entity¹⁴;
- 793 (3) the identity of the owner or lessee of the vehicle¹⁵;
- 794 (4) any restrictions on how the vehicle may be used¹⁶;
- 795 (5) safety critical data relating to the maintenance schedule of the vehicle¹⁷.

Where there is a material change to any of the particulars set out in heads (1) to (5) above, the owner of the vehicle must give the registration body particulars of the change and the registration body is to alter the register accordingly¹⁸.

The registration body must make the National Vehicle Register available for inspection¹⁹:

- 796 (a) by any duly-designated safety authority or investigating body²⁰;
- 797 (b) in response to a reasonable request: (i) by any duly-designated regulatory body²¹; (ii) by the European Rail Agency²²; (iii) by railway undertakings²³; (iv) by infrastructure managers²⁴; and (v) by owners of project subsystems²⁵.

Any person who places in service a rolling stock vehicle must ensure it is marked with the ID code assigned to it²⁶.

1 For the meaning of 'rolling stock' see PARA 210 note 5 ante.

2 Ie under the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 4 (as to which see PARA 211 ante): see reg 33(1). All provisions of reg 33 apply to rolling stock vehicles for which there is a requirement for authorisation under reg 4: see reg 33(1).

3 For the meaning of 'placed in service' see PARA 211 note 8 ante.

4 For the meaning of 'contracting entity' see PARA 211 note 15 ante.

5 For the meaning of 'owner' see PARA 215 note 24 ante.

6 In Great Britain, the Secretary of State must designate a person to be the registration body from time to time provided that person is independent of any railway undertaking; and different persons may be designated to maintain the register in different parts of the United Kingdom: Railways (Interoperability) Regulations 2006,

SI 2006/397, reg 33(12). See note 2 *supra*. Accordingly, for the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397, 'registration body' means the person designated under reg 33(12); reg 2(3). For the meaning of 'Great Britain' see PARA 29 note 3 *ante*; and for the meaning of 'United Kingdom' see PARA 31 note 2 *ante*. As to the register and its maintenance see the text and notes 8-25 *infra*. As to the Secretary of State see PARA 35 *ante*.

7 Ibid reg 33(1), (2). See note 2 *supra*. For these purposes, 'ID code' means a unique alphanumeric identification code assigned to a rolling stock vehicle by the registration body: reg 2(3).

8 The registration body may reserve ID codes for rolling stock vehicles notwithstanding an application has not been made: *ibid* reg 33(5). In the case of a rolling stock vehicle first placed in service outside the United Kingdom and clearly identified by a different coding system, the registration body may assign it with an ID code that is the same as that by which it is identified under the different coding system: reg 33(4). See note 2 *supra*.

9 Ibid reg 33(3). See note 2 *supra*.

10 *Ie* under *ibid* reg 4 (as to which see PARA 211 *ante*): see reg 33(9). The contracting entity in relation to a vehicle or the owner of the vehicle must, no later than 14 days after the date of authorisation, provide particulars to the registration body of the matters specified in reg 33(9)(b)-(e) (see heads (2) to (5) in the text), and such further information as the registration body may reasonably require: reg 33(7). However, in the case of a rolling stock vehicle authorised by the operation of reg 4(8) (authorisation issued by the Safety Authority: see PARA 211 *ante*), the particulars required under reg 33(9) (see heads (1) to (5) in the text) must be provided before the vehicle is placed in service: reg 33(8). See note 2 *supra*.

11 Ibid reg 33(9). See note 2 *supra*.

12 Ibid reg 33(9)(a). See note 2 *supra*.

13 For the meaning of 'verification declaration' see PARA 211 note 15 *ante*.

14 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 33(9)(b). See note 2 *supra*.

15 Ibid reg 33(9)(c). See note 2 *supra*.

16 Ibid reg 33(9)(d). See note 2 *supra*.

17 Ibid reg 33(9)(e). See note 2 *supra*.

18 Ibid reg 33(10). See note 2 *supra*.

19 Ibid reg 33(11). See note 2 *supra*.

20 Ibid reg 33(11)(a). The text refers to any safety authority or investigating body designated in Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings (the 'Railway Safety Directive') (OJ L164, 30.04.2004, p 44) (as to which see PARA 30 *ante*) art 16 (safety authority) and art 21 (investigating body): see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 33(11)(a). See note 2 *supra*.

21 Ibid reg 33(11)(b)(i). The text refers to any regulatory body designated in Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 30 (amended by Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L164, 30.04.2004, p 44)): see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 33(11)(b). See note 2 *supra*.

22 Ibid reg 33(11)(b)(ii). See note 2 *supra*. For these purposes, 'European Railway Agency' means the agency for railway safety and interoperability established by Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency ('Agency Regulation') (OJ L164, 30.04.2004, p 1) (as to which see PARA 28 *ante*): Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3).

23 Ibid reg 33(11)(b)(iii). See note 2 *supra*.

24 Ibid reg 33(11)(b)(iv). See note 2 *supra*.

25 Ibid reg 33(11)(b)(v). See note 2 *supra*. For the meaning of 'subsystem' see PARA 210 note 5 *ante*; and for the meaning of 'project subsystem' see PARA 211 note 17 *ante*.

26 Ibid reg 33(6). See note 2 *supra*.

UPDATE

226 National vehicle register

NOTE 21--Directive 2001/14 art 30 further amended by Directive 2007/58.

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227. Registers of authorised infrastructure and authorised rolling stock.

An owner¹ of authorised rolling stock² must keep a register of the authorised rolling stock of which he is the owner (a 'rolling stock register')³. The particulars to be entered in a rolling stock register are, for each authorised rolling stock vehicle of which he is the owner⁴:

- 798 (1) its vehicle ID code⁵;
- 799 (2) its basic parameters⁶;
- 800 (3) the correlation of the basic parameters with the features laid down by any relevant technical specification for interoperability (TSI)⁷ with which it is required to comply⁸;
- 801 (4) any information required by any relevant TSI with which it is required to comply⁹.

An owner of authorised infrastructure¹⁰ must keep a register of the authorised infrastructure of which he is the owner (an 'infrastructure register')¹¹. The particulars to be entered in an infrastructure register are, for authorised infrastructure of which he is the owner¹²:

- 802 (a) its basic parameters¹³;
- 803 (b) the correlation of the basic parameters with the features laid down by any relevant TSI with which it is required to comply¹⁴;
- 804 (c) any information required by any relevant TSI with which it is required to comply¹⁵.

The owner¹⁶ of authorised rolling stock or authorised infrastructure must update the particulars in the relevant register¹⁷:

- 805 (i) each time a structural subsystem of which he is the owner¹⁸ is duly authorised¹⁹;
- 806 (ii) when the registration body gives notice of the ID code assigned²⁰ to an authorised rolling stock vehicle of which he is the owner²¹;
- 807 (iii) each time authorised rolling stock or authorised infrastructure is taken permanently out of use²²; or
- 808 (iv) each time he acquires ownership of authorised rolling stock or authorised infrastructure²³.

Within 21 days of an event specified in head (i) to head (iv) above, the owner²⁴ of the authorised rolling stock or authorised infrastructure must send to the Competent Authority²⁵ a copy of the appropriate updated register²⁶. The owner of authorised rolling stock or authorised infrastructure who disposes of his interest in that rolling stock or infrastructure must give to the person who acquires that interest a copy of the particulars that he has kept in the register in respect of that rolling stock or infrastructure²⁷.

The Secretary of State²⁸ must annually both publish²⁹, and send to the other Member States³⁰ and to the European Railway Agency³¹, a consolidated copy of the registers sent to the

Competent Authority³². The Secretary of State must provide a copy of the whole or part of the consolidated registers to any person within 21 days of a written³³ request by that person³⁴.

1 For the meaning of 'owner' see PARA 215 note 24 ante; and see note 16 infra.

2 For these purposes, 'authorised rolling stock' means a rolling stock subsystem authorised to be placed in service under the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 4 (see PARA 211 ante) and in use on the high-speed rail system or conventional TEN rail system: reg 31(10)(b). For the meanings of 'conventional TEN rail system', 'high-speed rail system', 'rolling stock' and 'subsystem' see PARA 210 note 5 ante.

3 Ibid reg 31(1).

4 Ibid reg 31(3).

5 Ibid reg 31(3)(a). For the meaning of 'ID code' see PARA 226 note 7 ante.

6 Ibid reg 31(3)(b). For these purposes, 'basic parameters' means any regulatory, technical or operational condition which is critical to interoperability and requires a decision or recommendation in accordance with the procedure laid down in Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (as amended) (the 'High-Speed Directive': see PARA 210 note 5 ante) art 21(2) (substituted by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)) and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (as amended) (the 'Conventional Directive': see PARA 210 note 5 ante) art 21(2) (substituted by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)): Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(3).

7 For the meaning of 'TSI' see PARA 210 note 5 ante.

8 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 31(3)(c).

9 Ibid reg 31(3)(d).

10 For these purposes, 'authorised infrastructure' means a structural subsystem, other than rolling stock, authorised to be placed in service under ibid reg 4 (see PARA 211 ante) and in use on or as part of the high-speed rail system or conventional TEN rail system: reg 31(10)(a). For the meaning of 'structural subsystem' see PARA 210 note 5 ante.

11 Ibid reg 31(2).

12 Ibid reg 31(4).

13 Ibid reg 31(4)(a).

14 Ibid reg 31(4)(b).

15 Ibid reg 31(4)(c).

16 For the purposes of ibid reg 31(5)-(7) (see the text and notes 17-26 infra), the owner in the case of a change of ownership means the acquiring owner: reg 31(8).

17 Ibid reg 31(5).

18 See note 16 supra.

19 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 31(5)(a). The text refers to an authorisation pursuant to reg 4 (as to which see PARA 211 ante): see reg 31(5)(a).

20 I.e. assigned under ibid reg 33(4) (as to which see PARA 226 ante): see reg 31(5)(b).

21 Ibid reg 31(5)(b).

22 Ibid reg 31(5)(c).

23 Ibid reg 31(5)(d). As to ownership see note 16 supra.

24 See note 16 supra.

25 For the meaning of 'Competent Authority' see PARA 211 note 9 ante.

26 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 31(6). An owner of authorised rolling stock or authorised infrastructure who is not the operator of that rolling stock or infrastructure must send to the operator of that rolling stock or infrastructure a copy of the rolling stock register or infrastructure register, as the case may be, at the same time that he is required to send a copy of the register to the Competent Authority in accordance with reg 31(6): reg 31(7). See note 16 supra.

27 Ibid reg 31(9).

28 As to the Secretary of State see PARA 35 ante.

29 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 32(1)(a).

30 As to the meaning of references to the 'Member State' see PARA 212 note 30 ante.

31 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 32(1)(b). For the meaning of 'European Railway Agency' see PARA 226 note 22 ante.

32 Ibid reg 32(1). The text refers to a consolidated copy of the registers which is sent to the Competent Authority pursuant to reg 31(6) (see the text and notes 24-26 supra): see reg 32(1).

33 As to the meaning of 'writing' see PARA 211 note 12 ante.

34 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 32(2).

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(f) Enforcement

228. Enforcement in Great Britain.

It is the duty of the Office of Rail Regulation¹ to make adequate arrangements for the enforcement of the interoperability provisions² in Great Britain³.

Specified provisions of the Health and Safety at Work etc Act 1974 which relate to offences and enforcement⁴ apply for such purposes⁵ as if they were Health and Safety Regulations for the purposes of that Act⁶. However, a failure to discharge a duty placed on either the Office of Rail Regulation⁷ or on the Safety Authority⁸ by the interoperability provisions⁹ is not to be an offence under the Health and Safety at Work etc Act 1974¹⁰.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 Ie the Railways (Interoperability) Regulations 2006, SI 2006/397: see reg 34(1).

3 Ibid reg 34(1). Accordingly, a reference to the enforcing authority in the provisions applied for the purposes of the Railways (Interoperability) Regulations 2006, SI 2006/397 by reg 34(3) (see note 4 infra) is to be construed as a reference to the Office of Rail Regulation: see reg 34(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

4 The provisions of the Health and Safety at Work etc Act 1974 referred to in the text are: (1) ss 19-22 (as amended) (enforcement: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 375-378); (2) s 23 (as amended) (supplementary provisions: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 377) and s 24 (as amended) (appeal against improvement or prohibition notice: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 379); (3) s 26 (power to indemnify inspectors: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375); and (4) ss 33-42 (as amended) (provision as to offences: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq): see the Railways (Interoperability) Regulations 2006, SI 2006/397, regs 2(3), 34(3).

5 Ie for the purposes of the enforcement in Great Britain of the Railways (Interoperability) Regulations 2006, SI 2006/397: see reg 34(2).

6 Ibid regs 2(3), 34(2).

7 Ibid reg 34(4)(a).

8 Ibid reg 34(4)(b). For the meaning of 'Safety Authority' see PARA 211 note 7 ante.

9 Ie by the Railways (Interoperability) Regulations 2006, SI 2006/397: see reg 34(4).

10 Ibid regs 2(3), 34(4). The text refers to an offence under the Health and Safety at Work etc Act 1974 s 33(1)(c) (as amended) (contravention of any health and safety regulations or any requirement or prohibition imposed under any such regulations: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852): see the Railways (Interoperability) Regulations 2006, SI 2006/397, regs 2(3), 34(4).

UPDATE

228 Enforcement in Great Britain

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(B) Interoperability of the United Kingdom Parts of the Trans-European Rail System/(f) Enforcement/229. Notices relating to interoperability constituents not meeting the essential requirements.

229. Notices relating to interoperability constituents not meeting the essential requirements.

If the Office of Rail Regulation¹ is of the opinion that an interoperability constituent² in relation to which an EC declaration of conformity or suitability for use³ has been drawn up does not meet the essential requirements⁴ relating to it, the Office of Rail Regulation may serve a notice on the person who is using or intending to use that interoperability constituent in a project subsystem⁵ in relation to which that person is a contracting entity⁶, to prohibit the use of or restrict the area of use of that interoperability constituent⁷. The information to be contained in such a notice⁸ is:

- 809 (1) a statement that the Office of Rail Regulation is of the opinion that such an interoperability constituent does not meet the essential requirements relating to it⁹;
- 810 (2) the reasons for that opinion¹⁰;
- 811 (3) a direction that the interoperability constituent to which that notice relates is not to be used, or that its area of use is to be restricted¹¹; and
- 812 (4) the date by which the contracting entity must comply with the notice¹².

Where such a notice has been duly served on the contracting entity¹³, the contracting entity must¹⁴:

- 813 (a) comply with that notice¹⁵; and
- 814 (b) notify the person, if any, who supplied him with the interoperability constituent in relation to which the notice of non-conformity or non-suitability¹⁶ was served¹⁷: (i) that such a notice¹⁸ has been served¹⁹; (ii) of what the notice says²⁰; and (iii) that he requires that person in turn to notify his supplier, if any, with the same information required by head (i) and head (ii) above²¹.

Any notice that an interoperability constituent does not meet the essential requirements²² may be withdrawn by the Office of Rail Regulation by serving written²³ notice of the withdrawal on the contracting entity²⁴.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

3 For the meaning of 'EC declaration of conformity or suitability for use' see PARA 218 note 1 ante.

4 For the meaning of 'essential requirements' see PARA 210 note 5 ante.

5 For the meaning of 'project subsystem' see PARA 211 note 17 ante; and for the meaning of 'subsystem' see PARA 210 note 5 ante.

6 For the meaning of 'contracting entity' see PARA 211 note 15 ante.

7 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 36(1).

8 le a notice served under *ibid* reg 36(1) (as to which see the text and notes 1-7 *supra*): see reg 36(2).

9 *Ibid* reg 36(2)(a). The text refers to a statement that the Office of Rail Regulation is of the opinion referred to in reg 36(1) (as to which see the text and notes 1-7 *supra*): see reg 36(2)(a).

10 *Ibid* reg 36(2)(b).

11 *Ibid* reg 36(2)(c).

12 *Ibid* reg 36(2)(d).

13 le served in accordance with *ibid* reg 36: see reg 36(4).

14 *Ibid* reg 36(4).

15 *Ibid* reg 36(4)(a).

16 le the notice under *ibid* reg 36(1) (as to which see the text and notes 1-7 *supra*): see reg 36(4)(b).

17 *Ibid* reg 36(4)(b).

18 le a notice under *ibid* reg 36(1) (as to which see the text and notes 1-7 *supra*): see reg 36(4)(b)(i).

19 *Ibid* reg 36(4)(b)(i).

20 *Ibid* reg 36(4)(b)(ii).

21 *Ibid* reg 36(4)(b)(iii).

22 le a notice served under *ibid* reg 36(1) (as to which see the text and notes 1-7 *supra*): see reg 36(3).

23 As to the meaning of 'writing' see *PARA 211* note 12 *ante*.

24 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 36(3).

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230. Notice of improper drawing up of the EC declaration of conformity for an interoperability constituent.

Where the Office of Rail Regulation¹ has reasonable grounds for suspecting that the EC declaration of conformity² for an interoperability constituent³ has not been drawn up in accordance with the requirements⁴ by the manufacturer of the interoperability constituent or his authorised representative established in the Community⁵, it may give notice in writing⁶ to the manufacturer or his authorised representative established in the Community⁷. A notice which is given in this way must:

- 815 (1) state that the Office of Rail Regulation considers that the EC declaration of conformity has not been properly drawn up⁸;
- 816 (2) specify the respect in which it is so considered and give particulars⁹;
- 817 (3) require the manufacturer, or his authorised representative established in the Community, either¹⁰:
- 19
- 42. (a) to secure that any interoperability constituent to which the notice relates conforms as regards the provisions concerning the proper drawing up of the declaration within such period as may be specified in the notice¹¹; or
- 43. (b) to provide evidence within that period, to the satisfaction of the Office of Rail Regulation, that the declaration has been properly drawn up¹²;
- 20
- 818 and
- 819 (4) inform the manufacturer or his authorised representative established in the Community that if the non-conformity continues (or if satisfactory evidence has not been provided) within the period specified in the notice, further action may be taken in respect of that non-conformity under the interoperability provisions¹³.

Where such a notice has been served on the manufacturer or his authorised representative established in the Community, the person served must comply or secure compliance with the notice¹⁴.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 For the meaning of 'EC declaration of conformity or suitability for use' see PARA 218 note 1 ante.

3 For the meaning of 'interoperability constituent' see PARA 210 note 5 ante.

4 I.e the requirements of the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 16 (as to which see PARA 218 ante): see reg 37(1).

5 As to the meaning of references to the 'Community' see PARA 212 note 30 ante.

6 As to the meaning of 'writing' see PARA 211 note 12 ante.

7 Railways (Interoperability) Regulations 2006, SI 2006/397, reg 37(1).

8 Ibid reg 37(2)(a). The text refers to a EC declaration of conformity that has not been properly drawn up in accordance with reg 16 (as to which see PARA 218 ante): see reg 37(2)(a).

9 Ibid reg 37(2)(b).

10 Ibid reg 37(2)(c).

11 Ibid reg 37(2)(c)(i).

12 Ibid reg 37(2)(c)(ii).

13 Ibid reg 37(2)(d). The text refers to non-conformity under the Railways (Interoperability) Regulations 2006, SI 2006/397: see reg 37(2)(d).

14 Ibid reg 37(3).

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(C) GENERAL SAFETY REQUIREMENTS AND PROHIBITIONS

(a) Definitions

231. Meanings of 'infrastructure' and 'transport system'.

'Infrastructure' means¹ fixed assets used for the operation of a transport system which includes, without prejudice to the generality of the foregoing:

- 820 (1) its permanent way or other means of guiding or supporting vehicles;
- 821 (2) any station²; and
- 822 (3) plant used for signalling or exclusively for supplying electricity for operational purposes to the transport system³.

For these purposes, 'transport system' means a railway⁴, a tramway⁵, or any other system using guided transport⁶ where that other system is used wholly or mainly for the carriage of passengers⁷. However, a 'transport system' does not include:

- 823 (a) a guided bus system⁸;
- 824 (b) a trolley vehicle system⁹;
- 825 (c) any part of a transport system: (i) within a harbour or harbour area¹⁰ or which is part of a factory¹¹, mine¹² or quarry¹³; (ii) used solely for the purpose of carrying out a building operation¹⁴ or work of engineering construction; (iii) within a maintenance or goods depot; (iv) within a siding¹⁵; or (v) which is within a military establishment¹⁶;
- 826 (d) any fairground equipment;
- 827 (e) any cableway installation¹⁷; or
- 828 (f) any transport system where the track forms a gauge of less than 350 millimetres except where such a track crosses a carriageway (whether or not on the same level), except where the transport system in question forms part of the mainline railway¹⁸.

¹ le for the purposes of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (see PARA 232 et seq post).

² For these purposes, 'station' means a passenger stop, station or terminal on a transport system but does not include any permanent way or other means of guiding or supporting vehicles or plant used for signalling or exclusively for supplying electricity for operational purposes to a transport system: *ibid* reg 2(1). 'Vehicle' includes a mobile traction unit: *ibid* reg 2(1).

³ *Ibid* reg 2(1).

⁴ For these purposes, 'railway' means a system of transport employing parallel rails which: (1) provide support and guidance for vehicles carried on flanged wheels; and (2) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level), but does not include a tramway (as to which see note 5 *infra*): *ibid* reg 2(1). 'Carriageway' has the same meaning as in the Highways Act 1980 (see s 329(1)); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1).

5 For these purposes, 'tramway' means a system of transport used wholly or mainly for the carriage of passengers: (1) which employs parallel rails which provide support and guidance for vehicles carried on flanged wheels and are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public has access only on making a payment); and (2) on any part of which the permitted maximum speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead: *ibid* reg 2(1). For the purposes of the definition of 'tramway', 'road' means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes: reg 2(1). As to safety and welfare matters relating to tramways generally see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1615 et seq.

6 For these purposes, 'guided transport' means a system of transport, used wholly or mainly for the carriage of passengers, employing vehicles which for some or all of the time when they are in operation are guided by means of: (1) rails, beams, slots, guides or other apparatus, structures or devices which are fixed and not part of the vehicle; or (2) a guidance system which is automatic: *ibid* reg 2(1).

7 *Ibid* reg 2(1). As to guided transport systems generally see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1627 et seq.

8 For these purposes, 'guided bus system' means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation: (1) travel along roads; and (2) are guided (whether while on the road or at other times) by means of apparatus, a structure or other device which is fixed and not part of the bus, or a guidance system which is automatic: *ibid* reg 2(1). 'Bus' means a motor vehicle which is designed or adapted to travel along roads and to carry more than eight passengers but which is not a tramcar: reg 2(1). For the purposes of the definition of 'guided bus system', 'road' means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes: reg 2(1).

9 For these purposes, 'trolley vehicle system' means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles): *ibid* reg 2(1). As to trolley vehicle systems generally see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1627 et seq.

10 For these purposes, 'harbour' and 'harbour area' have the meanings assigned to them by the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (see reg 2(1); and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 700): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1).

11 For these purposes, 'factory' means a factory within the meaning of the Factories Act 1961 s 175 (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 318 et seq) and premises to which s 123(1)-(2) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 309) or s 125(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 311) applies: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1).

12 For these purposes, 'mine' has the meaning assigned to it in the Mines and Quarries Act 1954 (see s 180 (as amended); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1).

13 For these purposes, 'quarry' has the same meaning as in the Quarries Regulations 1999, SI 1999/2024 (see reg 3; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1).

14 For these purposes, 'building operation' means the: (1) construction, structural alteration, repair or maintenance of a building (where 'maintenance' includes repointing, redecoration and external cleaning of the structure); (2) demolition of a building; or (3) preparation for and laying the foundation of an intended building, but does not include any operation which is a work of engineering construction: *ibid* reg 2(1). 'Work of engineering construction' means the: (a) construction of any line or siding otherwise than on an existing transport system; and (b) construction, structural alteration, repair (including repointing and repainting) or demolition of any tunnel, bridge or viaduct except where carried on upon a transport system: reg 2(1).

15 *Ie* except where *ibid* Pt 4 (regs 23-26) (safety critical work) applies (see PARA 253 et seq post): see reg 2(1).

16 For these purposes, 'military establishment' means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence: *ibid* reg 2(1).

17 For these purposes, 'cableway installation' means an installation made up of several components that: (1) is used or intended to be used for the purpose of providing an operational system for carrying persons in

vehicles, on chairs or by towing devices; (2) uses cables positioned along the line of travel to provide suspension or traction or both; and (3) is one of the following: (a) cable car (including a gondola and chair lift) where the cabins or chairs are lifted or displaced by one or more carrier cables; (b) drag lift, where users with appropriate equipment are dragged by means of a cable; or (c) funicular railway or other installation with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables, but does not include cable operated tramways, rack railways or lifts: *ibid* reg 2(1). As to the safety of cableway installations see *PARA 260* post.

18 *Ibid* reg 2(1).

For these purposes, 'mainline railway' means any railway except for any railway or part of a railway: (1) the infrastructure and rolling stock of which are reserved strictly for a local use, or for the operating of a heritage railway or for the purposes of tourism; or (2) the infrastructure of which is functionally separate from any other railway which does not fall within head (1) *supra*: *ibid* reg 2(1). 'Heritage railway' means a railway which is operated either: (a) to preserve, re-create or simulate railways of the past; or (b) to demonstrate or operate historical or special types of motive power or rolling stock, and is exclusively or primarily used for tourist, educational or recreational purposes: reg 2(1).

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(b) Safety Management, Certification and Authorisation

UPDATE

231 Meanings of 'infrastructure' and 'transport system'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

232. Use of infrastructure on the mainline railway.

No person is to operate a train¹ in relation to any infrastructure on the mainline railway² unless³:

- 829 (1) he has established and is maintaining a safety management system⁴ which meets the specified requirements⁵; and
- 830 (2) he holds a current safety certificate⁶ in relation to the operation in question⁷,

except to the extent that he is doing so within an engineering possession⁸. The requirements for a safety management system referred to in head (1) above are that:

- 831 (a) it is established to ensure that the mainline railway system⁹ can achieve the common safety targets (CSTs)¹⁰ and is in conformity with relevant national safety rules¹¹ and relevant safety requirements laid down in technical specifications for interoperability (TSIs)¹²;
- 832 (b) it applies the relevant parts of the common safety methods (CSMs)¹³;
- 833 (c) it meets the specified requirements on, and contains the specified basic elements of, the safety management system¹⁴, adapted to the character, extent and other characteristics of the operation in question¹⁵;
- 834 (d) it ensures the control of all categories of risk including new¹⁶ or existing risks associated with the operation in question¹⁷;
- 835 (e) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons¹⁸; and
- 836 (f) all parts of it are documented¹⁹.

No person who is responsible for developing and maintaining infrastructure other than a station, or who is responsible for managing and operating a station on the mainline railway, is to manage and use it²⁰, or permit it to be used, for the operation of trains unless²¹:

- 837 (i) he has established and is maintaining a safety management system which meets the specified requirements²²;

- 838 (ii) he holds a current safety authorisation in relation to the infrastructure in question²³; and
- 839 (iii) where he is using it or permitting such use, the person who is to use the infrastructure has complied with head (2) above²⁴.

The requirements for a safety management system referred to in head (i) above are the requirements which apply to operating a train in relation to any infrastructure on the mainline railway²⁵, save that any reference to new or altered vehicles must be replaced with a reference to new or altered infrastructure²⁶, and that:

- 840 (A) it ensures the control of all categories of risk associated with the placing in service of new or altered infrastructure the design or construction of which incorporates significant changes compared to any infrastructure already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk²⁷;
- 841 (B) it takes into account the effects of operations of transport undertakings²⁸;
- 842 (C) it contains provisions to ensure that the way in which the infrastructure manager carries out his operation makes it possible for any transport undertaking to operate in accordance with relevant TSIs and national safety rules²⁹ and in accordance with the means adopted by the transport undertaking to meet the requirements in relation to a safety certificate that are necessary to ensure safe operation on the transport system in question³⁰; and
- 843 (D) it aims to co-ordinate the emergency procedures of the infrastructure manager or of the applicant for a safety authorisation with those of transport undertakings³¹.

However, in each case, the requirements in heads (A) to (D) above only apply in relation to transport undertakings that operate or will operate a train in relation to the infrastructure of the infrastructure manager or of the applicant for a safety authorisation in question³².

1 le after 30 September 2006: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 3(1). As to transitional provisions and savings see reg 29, Sch 5.

Any reference in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, to a person who operates a train or a vehicle is a reference to the person operating the train or vehicle for the time being in the course of a business or other undertaking carried on by him, whether for profit or not, but it does not include a self-employed person by reason only that he drives or otherwise controls the movement of a train or vehicle: reg 2(2). However, Pt 2 (regs 3-18) (safety management, certification and authorisation) (also see PARA 233 et seq post) and Pt 3 (regs 19-22) (general duties) (see PARA 249 et seq post) do not apply to or in relation to the operation of a train or the management or use of infrastructure in the tunnel system within the meaning of the Channel Tunnel Act 1987 s 1(7) (as to which see PARA 109 note 1 ante); Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(3). For these purposes, 'train' includes any rolling stock: reg 2(1). For the meaning of 'rolling stock' see PARA 82 note 2 ante; definition applied by reg 2(1). For the meaning of 'infrastructure' see PARA 231 ante. As to the meaning of 'vehicle' see PARA 231 note 2 ante. As to the Channel Tunnel see PARA 324 post.

2 For the meaning of 'mainline railway' see PARA 231 note 18 ante. As to the use of infrastructure on transport systems other than the mainline railway see PARA 233 post.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 3(1).

4 For these purposes, 'safety management system' means the organisation and arrangements established by a transport operator to ensure the safe management of its operation: *ibid* reg 2(1). 'Transport operator' means any transport undertaking or infrastructure manager; 'transport undertaking' means any person who operates a vehicle in relation to any infrastructure but does not include a person who operates a vehicle solely within an engineering possession, where 'engineering possession' means a section of track which is closed to normal traffic and where the closure is for the purpose of carrying out maintenance which includes any repair, alteration, reconditioning, examination or testing of infrastructure; and 'infrastructure manager' means the person: (1) who, in relation to infrastructure other than a station, is responsible for developing and maintaining

that infrastructure or, in relation to a station, the person who is responsible for managing and operating that station (except that it is not to include any person solely on the basis that he carries out the construction of that infrastructure or station or its maintenance, repair or alteration); and (2) who manages and uses that infrastructure or station, or permits it to be used, for the operation of a vehicle: reg 2(1). For the meaning of 'station' see PARA 231 note 2 ante. As to the meaning of 'vehicle' see PARA 231 note 2 ante. As to the meaning of references to 'operating' a vehicle see PARA 233 note 1 post.

5 Ibid reg 3(1)(a). The text refers to the requirements set out in reg 5(1)-(4) (as to which see the text and notes 9-19 infra): see reg 3(1)(a).

6 For these purposes, 'safety certificate' means a safety certificate issued by the Office of Rail Regulation in accordance with ibid reg 7 (safety certificate: see PARA 237 post) or reg 9 (further safety certificate: see PARA 238 post): reg 2(1). As to the Office of Rail Regulation see PARA 49 et seq ante.

7 Ibid reg 3(1)(b).

8 Ibid reg 3(1).

9 For these purposes, 'mainline railway system' means the mainline railway and the management and operation of the mainline railway as a whole: ibid reg 2(1).

10 Ibid reg 5(1)(a)(i). For these purposes, 'common safety targets' (CSTs) means the safety levels, developed pursuant to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive': see PARA 30 ante) (OJ L164, 30.04.2004, p 44) art 7, that must be reached both by different parts of the mainline railway system and by that system as a whole, expressed in risk acceptance criteria, as revised and reissued from time to time: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1). For the purposes of Pt 1 (regs 1-2) (introduction) and Pt 2 (safety management, certification and authorisation) (see also PARA 233 et seq post), 'risk' means a risk to the safety of a person: reg 2(1).

The requirements in reg 5(1)(a) (and in reg 5(1)(d): see head (d) in the text) are met where the safety management system of a transport operator (or that of an applicant for a safety certificate or a safety authorisation (the 'first operator') taken with that of any relevant transport operator) is capable of meeting the requirements of the paragraph in question: reg 5(2). For these purposes, 'relevant transport operator' means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator: reg 5(3). 'Safety authorisation' means a safety authorisation issued by the Office of Rail Regulation in accordance with reg 10 (safety authorisation: see PARA 240 post) or reg 12 (further safety authorisation: see PARA 241 post): reg 2(1).

11 For these purposes, 'national safety rules' means any legislation and other requirements: (1) applicable to the whole of Great Britain; and (2) which contain requirements (including common operating rules) relating to railway safety which are imposed on more than one railway undertaking, except that where the requirements in head (2) supra consist of common operating rules of the mainline railway it does not include such rules which regulate matters that are covered by a TSI: ibid reg 2(1). 'Technical specifications for interoperability' (TSIs) means technical specifications for interoperability which are published in the Official Journal pursuant to: (a) Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) (the 'High-Speed Directive': see PARA 210 note 5 ante) art 6(1) (art 6 substituted by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ L164, 30.04.2004, p 114)); or (b) Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.04.2001, p 1) (the 'Conventional Directive': see PARA 210 note 5 ante) art 6(1) (art 6 substituted by Directive 2004/50/EC (OJ L164, 30.04.2004, p 114)), and in force: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

12 Ibid reg 5(1)(a)(ii). As to when the requirements in reg 5(1)(a) are met see note 10 supra.

13 Ibid reg 5(1)(b). For these purposes, 'common safety methods' (CSMs) means the methods, developed pursuant to Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) art 6, to describe how: (1) safety levels; (2) achievement of safety targets; and (3) compliance with other safety requirements, are assessed (as revised and reissued from time to time): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1).

14 Ie as set out in ibid reg 5(1)(c), Sch 1: see reg 5(1)(c). The contents of Sch 1 substantially reproduce the provisions of Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) Annex III para 1 (requirements on the safety management system) and Annex III para 2 (basic elements of the safety management system): see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 1 (note). As to the requirements on the safety management system see Sch 1 para 1 (cited in PARA 234 post); and as to the basic elements of the safety management system see Sch 1 para 2 (cited in PARA 235 post).

15 Ibid reg 5(1)(c).

16 In relation to ibid reg 5, 'new' means new to the transport system in question: reg 2(1). For the meaning of 'transport system' see PARA 231 ante.

17 Ibid reg 5(1)(d). Without prejudice to the generality of head (d) in the text, the requirement for the control of all categories of risk includes such risks relating to: (1) the supply of maintenance and material (reg 5(1)(d)(i)); (2) the use of contractors (reg 5(1)(d)(ii)); and (3) the placing in service of new or altered vehicles the design or construction of which incorporates significant changes compared to any vehicle already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk (reg 5(1)(d)(iii)). For these purposes, 'material' includes plant (reg 2(1)); and, for the purposes of reg 5 only, 'placing in service' is to mean first placed in service for the provision of a transport service (and in ascertaining when this takes place no regard is to be had to any trials or testing that takes place to the relevant vehicle) (reg 5(6)). For the meaning of 'significant safety risk' see note 27 infra. As to when the requirements in reg 5(1)(d) are met see note 10 supra; and as to further requirements imposed on the transport operator pursuant to head (3) supra see PARA 236 post.

18 Ibid reg 5(1)(e).

19 Ibid reg 5(1)(f).

20 Ie after 30 September 2006: see ibid reg 3(2). As to transitional provisions and savings see reg 29, Sch 5.

21 Ibid reg 3(2).

22 Ibid reg 3(2)(a). For these purposes, the requirements mentioned in the text are those referred to in reg 5(7) (as to which see the text and notes 25-32 infra): see reg 3(2)(a).

23 Ibid reg 3(2)(b).

24 Ibid reg 3(2)(c).

25 Ie the requirements in ibid reg 5(1)-(6) (see the text and notes 9-19 supra): see reg 5(7).

26 Ibid reg 5(7).

27 Ibid reg 5(7)(a). For these purposes, 'significant safety risk' means, in relation to new or altered infrastructure or a new or altered vehicle, the design or construction of which incorporates significant changes compared to any infrastructure or vehicle already in use on the transport system, the capability of significantly increasing an existing safety risk or creating a significant safety risk to: (1) passengers on the transport system in question; or (2) members of the public on roads and any other location where the transport system in question operates and to which the public have access (including a place to which the public has access only on making a payment), except a location which is a crossing subject to an Order made under the Level Crossings Act 1983 s 1 (as amended) (see PARA 356 post): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1).

28 Ibid reg 5(7)(b).

29 Ibid reg 5(7)(c)(i).

30 Ibid reg 5(7)(c)(ii). The requirements mentioned in the text are those referred to in reg 7(4) (see PARA 238 post), of which the Office of Rail Regulation accepted that there was sufficient evidence upon issue or amendment of its safety certificate pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599: see reg 5(7)(c)(ii).

31 Ibid reg 5(7)(d).

32 Ibid reg 5(7).

UPDATE

232 Use of infrastructure on the mainline railway

NOTE 13--For a CSM on risk evaluation and assessment established in accordance with Directive 2004/49 art 6(3)(a), see EC Commission Regulation 352/2009 (OJ L108, 29.4.2009, p 4).

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233. Use of infrastructure on transport systems other than the mainline railway.

No person is to operate a vehicle¹ in relation to any infrastructure² on a transport system other than the mainline railway³ unless⁴:

- 844 (1) he has established and is maintaining a safety management system⁵ which meets the specified requirements⁶; and
- 845 (2) he holds a current safety certificate⁷ in relation to the operation in question⁸,

except to the extent that he is doing so within an engineering possession⁹.

No person who is responsible for developing and maintaining infrastructure (other than a station¹⁰) or who is responsible for managing and operating a station on a transport system other than the mainline railway is to manage and use it¹¹ (or permit it to be used) for the operation of a vehicle unless¹²:

- 846 (a) he has established and is maintaining a safety management system which meets the specified requirements¹³;
- 847 (b) he holds a current safety authorisation¹⁴ in relation to the infrastructure in question¹⁵; and
- 848 (c) where he is using it or permitting such use, the person who is to use the infrastructure has complied with head (2) above¹⁶.

The requirements for a safety management system referred to in head (1) and in head (a) above are that:

- 849 (i) it is adequate to ensure that the relevant statutory provisions which make provision in relation to safety will be complied with in relation to the operation in question¹⁷;
- 850 (ii) it meets the specified requirements on, and contains the specified basic elements of, the safety management system¹⁸, adapted to the character, extent and other characteristics of the operation in question¹⁹;
- 851 (iii) it ensures the control of all categories of risk²⁰ associated with the operation in question²¹;
- 852 (iv) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons²²; and
- 853 (v) all parts of it are documented²³.

¹ I.e. after 30 September 2006: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 4(1). As to transitional provisions and savings see reg 29, Sch 5. Neither head (2) in the text nor heads (b), (c) in the text apply to the extent that the operation in question is only carried out either: (1) on a tramway (reg 4(3)(a)); or (2) on a transport system on no part of which there is a permitted maximum speed exceeding 40 kilometres per hour (reg 4(3)(b)). Where the operation in question falls within either head (1) or head (2) supra, the requirement in head (1) in the text or in head (a) in the text is to be read as if the date was, in each case, after 31 March 2007: reg 4(4). For the meaning of 'transport system' see PARA 231 ante;

and for the meaning of 'tramway' see PARA 231 note 5 ante. As to the meaning of 'vehicle' see PARA 231 note 2 ante. As to the meaning of references to a person who operates a vehicle see PARA 232 note 1 ante.

2 For the meaning of 'infrastructure' see PARA 231 ante.

3 For the meaning of 'mainline railway' see PARA 231 note 18 ante. As to the use of infrastructure on the mainline railway see PARA 232 ante.

4 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 4(1).

5 For the meaning of 'safety management system' see PARA 232 note 4 ante.

6 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 4(1)(a). The text refers to the requirements set out in reg 6 (as to which see the text and notes 17-23 infra): see reg 4(1)(a). See note 1 supra.

7 For the meaning of 'safety certificate' see PARA 232 note 6 ante.

8 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 4(1)(b). See note 1 supra.

9 Ibid reg 4(1). For the meaning of 'engineering possession' see PARA 232 note 4 ante.

10 For the meaning of 'station' see PARA 231 note 2 ante.

11 Ie after 30 September 2006: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 4(2). As to transitional provisions and savings see reg 29, Sch 5.

12 Ibid reg 4(2).

13 Ibid reg 4(2)(a). The text refers to the requirements set out in reg 6 (as to which see the text and notes 17-23 infra): see reg 4(2)(a). See note 1 supra.

14 For the meaning of 'safety authorisation' see PARA 232 note 10 ante.

15 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 4(2)(b)(i). See note 1 supra.

16 Ibid reg 4(2)(b)(ii). See note 1 supra.

17 Ibid reg 6(1)(a).

18 Ie as set out in ibid reg 6(1)(b), Sch 1, as applied and modified by reg 6(7): see reg 6(1)(b); and PARAS 234, 235 post. As to Sch 1 (safety management system) also see PARA 232 note 14 ante.

19 Ibid reg 6(1)(b).

20 For the meaning of 'risk' see PARA 232 note 10 ante.

21 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 6(1)(c). Without prejudice to the generality of head (iii) in the text, the requirement for the control of all categories of risk includes such risks relating to: (1) the supply of maintenance and material (reg 6(1)(c)(i)); (2) the use of contractors (reg 6(1)(c)(ii)); and (3) the placing in service of new or altered vehicles or infrastructure, the design or construction of which incorporates significant changes compared to any vehicles or infrastructure already in use on the transport system, and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk (reg 6(1)(c)(iii)). The requirement in reg 6(1)(c) is met where the safety management system of a transport operator (or that of an applicant for a safety certificate or a safety authorisation (the 'first operator') taken with that of any relevant transport operator) is capable of meeting the requirements of the paragraph in question: reg 6(2). For these purposes, 'relevant transport operator' means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator: reg 6(3). As to further requirements imposed on the transport operator pursuant to head (3) supra see PARA 236 post. For the purposes of reg 6 only, 'new' means new to the transport system in question (reg 2(1)); and 'placed in service' means first placed in service for the provision of a transport service (and in ascertaining when this takes place no regard is to be had to any trials or testing that takes place to the relevant vehicle or infrastructure) (reg 6(5)). For the meaning of 'transport operator' see PARA 232 note 4 ante; and for the meaning of 'significant safety risk' see PARA 232 note 27 ante. As to the meaning of 'material' see PARA 232 note 17 ante.

22 Ibid reg 6(1)(d).

23 Ibid reg 6(1)(e).

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234. Requirements on the safety management system.

The specified requirements on the safety management system¹ are that such a system must:

- 854 (1) describe the distribution of responsibilities, within the operation, for the safety management system²;
- 855 (2) show how control of the safety management system by the management on different levels is secured³;
- 856 (3) show how persons carrying out work or voluntary work directly in relation to the operation and their representatives on all levels are involved with the safety management system⁴; and
- 857 (4) show how continuous improvement of the safety management system is ensured⁵.

¹ See as set out in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, regs 5(1)(c), 6(1)(b), Sch 1: see reg 5(1)(c) (cited in PARA 232 ante); and reg 6(1)(b) (cited in PARA 233 ante). For the meaning of 'safety management system' see PARA 232 note 4 ante.

² Ibid Sch 1 para 1(a).

³ Ibid Sch 1 para 1(b).

⁴ Ibid Sch 1 para 1(c).

⁵ Ibid Sch 1 para 1(d).

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235. The basic elements of a safety management system.

The specified basic elements of a safety management system¹ are:

- 858 (1) a statement of the safety policy which has been approved by the chief executive and communicated to all persons carrying out work or voluntary work directly in relation to the operation²;
- 859 (2) qualitative and quantitative targets for the maintenance and enhancement of safety and plans and procedures for reaching those targets³;
- 860 (3) (in the case of the mainline railway only⁴) procedures to meet relevant technical and operational standards or other requirements as set out in: (a) technical specifications for interoperability (TSIs)⁵; (b) national safety rules⁶; (c) other relevant safety requirements⁷; and (d) decisions of the Office of Rail Regulation⁸ addressed to the transport operator⁹ in question¹⁰, and procedures to ensure compliance with the requirements listed in heads (a) to (d) above throughout the life-cycle of any relevant equipment or operation which is subject to the requirement in question¹¹;
- 861 (4) (in relation to transport systems other than the mainline railway only¹²) procedures: (a) to meet relevant technical specifications¹³; and (b) relating to operations or maintenance¹⁴, in so far as they relate to the safety of persons, and procedures for ensuring that the procedures in heads (a) and (b) above are followed throughout the life-cycle of any relevant equipment or operation¹⁵;
- 862 (5) procedures and methods for carrying out risk¹⁶ evaluation and implementing risk control measures when: (a) there is a change in the way in which the operation in question is carried out¹⁷; or (b) new material¹⁸ is used in the operation in question¹⁹, which gives rise to new risks in relation to any infrastructure²⁰ or the operation being carried out²¹;
- 863 (6) provision of programmes for training of persons carrying out work or voluntary work directly in relation to the operation and systems to ensure that the competence of such persons is maintained and that they carry out tasks accordingly²²;
- 864 (7) arrangements for the provision of sufficient information relevant to safety both: (a) within the operation in question²³; and (b) between the operator in question and any other transport operator or an applicant for a safety certificate²⁴ or a safety authorisation²⁵ who carries out or who intends to carry out operations on the same infrastructure²⁶;
- 865 (8) procedures and formats for the documentation of safety information²⁷;
- 866 (9) procedures to control the layout of, and changes to, vital safety information²⁸;
- 867 (10) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventative measures are taken²⁹;
- 868 (11) provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency³⁰; and
- 869 (12) provisions for recurrent internal auditing of the safety management system³¹.

- 1 le as set out in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, regs 5(1)(c), 6(1)(b), Sch 1: see reg 5(1)(c) (cited in PARA 232 ante); and reg 6(1)(b) (cited in PARA 233 ante). For the meaning of 'safety management system' see PARA 232 note 4 ante.
- 2 Ibid Sch 1 para 2(a).
- 3 Ibid Sch 1 para 2(b).
- 4 le for the purposes of ibid reg 5(1)(c) only (as to which see PARA 232 ante). For the meaning of 'mainline railway' see PARA 231 note 18 ante.
- 5 Ibid Sch 1 para 2(c)(i). For the meaning of 'technical specifications for interoperability' (TSIs) see PARA 232 note 11 ante.
- 6 Ibid Sch 1 para 2(c)(ii). For the meaning of 'national safety rules' see PARA 232 note 11 ante.
- 7 Ibid Sch 1 para 2(c)(iii).
- 8 As to the Office of Rail Regulation see PARA 49 et seq ante.
- 9 For the meaning of 'transport operator' see PARA 232 note 4 ante.
- 10 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 1 para 2(c) (iv).
- 11 Ibid Sch 1 para 2(c).
- 12 le for the purposes of ibid reg 6(1)(b) only (as to which see PARA 233 ante). For the meaning of 'transport system' see PARA 231 ante.
- 13 Ibid Sch 1 para 2(c)(i) (Sch 1 para 2(c) applied and modified by reg 6(7)).
- 14 Ibid Sch 1 para 2(c)(ii) (as applied and modified: see note 13 supra).
- 15 Ibid Sch 1 para 2(c) (as applied and modified: see note 13 supra).
- 16 For the meaning of 'risk' see PARA 232 note 10 ante.
- 17 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 1 para 2(d)(i).
- 18 As to the meaning of 'material' see PARA 232 note 17 ante.
- 19 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 1 para 2(d) (ii).
- 20 For the meaning of 'infrastructure' see PARA 231 ante.
- 21 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 1 para 2(d).
- 22 Ibid Sch 1 para 2(e).
- 23 Ibid Sch 1 para 2(f)(i).
- 24 For the meaning of 'safety certificate' see PARA 232 note 6 ante.
- 25 For the meaning of 'safety authorisation' see PARA 232 note 10 ante.
- 26 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 1 para 2(f)(ii).
- 27 Ibid Sch 1 para 2(g).
- 28 Ibid Sch 1 para 2(h).
- 29 Ibid Sch 1 para 2(i).
- 30 Ibid Sch 1 para 2(j).

31 Ibid Sch 1 para 2(k).

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236. Safety verification scheme.

Before new or altered vehicles and infrastructure¹ are placed in service², the transport operator³ must ensure⁴:

- 870 (1) that he has an established written⁵ safety verification scheme which meets the requirements and contains the elements set out in heads (a) to (e) below⁶; and
- 871 (2) that he has appointed a competent person⁷ to undertake that safety verification, and the competent person has undertaken that safety verification in relation to the new or altered vehicles or infrastructure, as the case may be⁸.

The information to be included in a safety verification scheme pursuant to head (1) above comprises:

- 872 (a) the arrangements for the selection, appointment and retention of the competent person⁹;
- 873 (b) the arrangements for the examination and testing of new or altered vehicles or infrastructure¹⁰;
- 874 (c) the arrangements for the review and revision of the verification scheme¹¹;
- 875 (d) the arrangements for the making and preservation of records¹²;
- 876 (e) the arrangements for communicating the matters contained in heads (a) to (d) above to an appropriate level in the management system of the transport operator or responsible person, as the case may be¹³.

It is an offence for any person, before new or altered vehicles and infrastructure are introduced, to fail to undertake established safety verification procedures¹⁴.

1 In new or altered vehicles and infrastructure the design or construction of which incorporates significant changes compared to any vehicles or infrastructure already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk, as provided for in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 5(1)(d)(iii) (requirements for a safety management system referred to in reg 3(1)(a)) (see reg 5(4)) and reg 6(1)(c)(iii) (requirements for a safety management system referred to in reg 4(1)(a) and reg 4(2)(a)) (see reg 6(4); and PARA 233 ante). For the meanings of 'infrastructure' and 'transport system' see PARA 231 ante; for the meaning of 'risk' for these purposes see PARA 232 note 10 ante; for the meaning of 'new' for these purposes see PARAS 232 note 16, 233 note 21 ante; and for the meaning of 'significant safety risk' see PARA 232 note 27 ante. As to the meaning of 'vehicle' see PARA 231 note 2 ante.

2 For the meaning of 'placed in service' for these purposes see PARAS 232 note 17, 233 note 21 ante.

3 For the meaning of 'transport operator' see PARA 232 note 4 ante. For the purposes of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 6, the requirements of reg 6(4) apply in the absence of a transport operator to a responsible person as they would apply to a transport operator: reg 6(6). For these purposes, 'responsible person' means, in relation to any relevant infrastructure or vehicle, any person who: (1) has contracted with another person for the manufacture or construction by that other person of that infrastructure or vehicle; or (2) manufactures or constructs that infrastructure or vehicle for his own use, or for sale to, or use by, another person but not where he is contracted to do so by a person falling under head (1) supra, and includes an authorised representative established in Great Britain of such a person: reg 2(1). For these purposes, 'relevant infrastructure or vehicle' means any new or altered infrastructure or

vehicle falling within reg 5(4) or reg 6(4) and related expressions are to be construed accordingly: reg 2(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

4 Ibid regs 5(4), 6(4).

Where a new or altered vehicle has been authorised under the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 4(1)(a) (see PARA 211 ante) for the placing in service on the mainline railway, that authorisation is to be treated as satisfying the requirements of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 5(4): reg 5(5). For the meaning of 'mainline railway' see PARA 231 note 18 ante.

5 For these purposes, 'writing', apart from its usual meaning (as to which see PARA 211 note 12 ante) includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent, in legible form: ibid reg 2(1).

6 Ibid regs 5(4)(a), 6(4)(a). The text refers to the requirements and elements set out in regs 5(4)(a), 6(4)(a), Sch 4 (written safety verification scheme requirements: see heads (a) to (e) in the text): see regs 5(4)(a), 6(4)(a).

7 For these purposes, except for the purposes of ibid Pt 4 (regs 23-26) (safety critical work) (see PARA 253 et seq post), 'competent person' means a person who: (1) has sufficient skills, knowledge, experience and resources to undertake the safety verification in relation to which he is appointed; (2) has not borne such responsibility in relation to any of the matters he has to consider in undertaking that safety verification that might compromise his objectivity; and (3) is sufficiently independent of a management system, or a part thereof, which has borne responsibility for any of the matters he has to consider in undertaking the safety verification, to ensure that he will be objective in carrying out the safety verification for which he is appointed: reg 2(1).

8 Ibid regs 5(4)(b), 6(4)(b).

9 Ibid Sch 4 para 1(1). The arrangements mentioned in the text should at least provide for:

- 196 (1) the appointment of the competent person at an early stage in the design selection process (Sch 4 para 1(1)(a));
- 197 (2) the involvement of the competent person in the establishing of the criteria to be applied in the verification process and the design selection process (Sch 4 para 1(1)(b)); and
- 198 (3) the communication to the competent person of information necessary for the proper implementation, or revision, of the verification scheme and which information is necessary in order for the competent person to undertake the verification (Sch 4 para 1(1)(c)).

10 Ibid Sch 4 para 1(2). The arrangements mentioned in the text should at least provide for: (1) the means of controlling risks that arise during the carrying out of any testing or trials prior to placing in service (Sch 4 para 1(2)(a)); and (2) the standards and criteria to be applied in the verification process (Sch 4 para 1(2)(b)).

11 Ibid Sch 4 para 1(3).

12 Ibid Sch 4 para 1(4). The arrangements for the making and preservation of records must show:

- 199 (1) the examination and testing carried out to the new or altered vehicles or infrastructure prior to its being placed in service (Sch 4 para 1(4)(a));
- 200 (2) the findings of that examination and testing (Sch 4 para 1(4)(b));
- 201 (3) any remedial action recommended as a result of that examination and testing (Sch 4 para 1(4)(c)); and
- 202 (4) any remedial action performed (Sch 4 para 1(4)(d)).

13 Ibid Sch 4 para 1(5).

14 See ibid reg 31(1); and PARA 371 post. The text refers to offences under reg 5(4) and reg 6(4) (see the text and notes 1-8 supra): see reg 31(1). As to liability for contraventions of safety verification requirements under the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 see PARA 432 post.

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237. Applications for safety certificates.

An application for a first safety certificate¹ in respect of an operation must²:

- 877 (1) be made to the Office of Rail Regulation³;
- 878 (2) include the information set out in head (a) and head (b) below in respect of a mainline application⁴ and set out in heads (A) to (E) below in respect of a non-mainline application⁵, as the case may be⁶; and
- 879 (3) if it is a mainline application, clearly indicate in respect of which part of the safety certificate any information is provided⁷.

The information to be included for a mainline application further to head (2) above is:

- 880 (a) in relation to Part A of a safety certificate⁸:
21
 - 44. (i) particulars of the type and extent of the operation in respect of which the application is made⁹; and
 - 45. (ii) either a copy of a current certificate issued to the applicant by the Office of Rail Regulation¹⁰, or particulars of how the safety management system¹¹ of the applicant meets the specified requirements¹²; and
- 22 881 (b) in relation to Part B of a safety certificate¹³:
23
 - 46. (i) information on the technical specifications for interoperability (TSIs)¹⁴, national safety rules¹⁵ and other safety requirements relevant to the applicant's operation including those relevant to persons carrying out work in relation to the operation and the applicant's vehicles and an explanation of how compliance with these requirements is ensured by the safety management system¹⁶;
 - 47. (ii) information on the different types of work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out such work that they are doing so in accordance with the requirements of any relevant TSIs and national safety rules¹⁷; and
 - 48. (iii) information on the different types of rolling stock¹⁸ used for the operation in question including evidence that they meet any relevant TSIs and national safety rules¹⁹.
- 24

The information to be included for a non-mainline application further to head (2) above is:

- 882 (A) particulars of the type and extent of the operation in respect of which the application is made²⁰;
- 883 (B) particulars of how the safety management system of the applicant meets the specified requirements²¹;

- 884 (c) information on the relevant statutory provisions which make provision in relation to safety that are applicable to the operation²² and information on the technical specifications and procedures relating to operations and maintenance that are relevant to the safety of the transport system which the applicant proposes to follow²³, and an explanation of how compliance with these requirements is ensured by the safety management system²⁴;
- 885 (d) information on the different types of work or voluntary work being carried out by persons directly in relation to the operation, including evidence of how the applicant ensures that, when such persons are carrying out work or voluntary work in relation to the operation, they are doing so in accordance with relevant requirements of the relevant statutory provisions that make provision in relation to safety which are applicable to the operation²⁵;
- 886 (e) information on the different types of rolling stock used for the operation including evidence that they meet relevant requirements of the relevant statutory provisions which make provision in relation to safety which are applicable to the operation²⁶.

Where an applicant sends an application for a safety certificate²⁷, then he must at the same time either copy it to any affected party²⁸ or notify any affected party without delay that the application has been sent (and of the address of the website where those documents may be accessed and how they may be accessed) and, in either case, must notify such a party, where the document in question is an application, of the time for making representations to the Office of Rail Regulation²⁹. Where an affected party receives a copy of an application, then he may make any representations in writing to the Office of Rail Regulation, which are relevant to the application, within 28 days of the date of issue of the application in question³⁰, and the Office of Rail Regulation must consider any such representations in making its decision³¹.

1 For the meaning of 'safety certificate' see PARA 232 note 6 ante.

2 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 7(1).

3 Ibid reg 7(1)(a). Any application sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1). As to the meaning of 'writing' see PARA 236 note 5 ante. As to the Office of Rail Regulation see PARA 49 et seq ante.

4 Ibid reg 7(1)(b)(i). The text refers to the information set out in reg 7(1)(b), Sch 2 Pt 1 (paras 1-2) (see heads (a) and (b) in the text): see reg 7(1)(b)(i). For these purposes, 'mainline application' means an application for: (1) a safety certificate or an amended safety certificate; or (2) a safety authorisation or an amended safety authorisation, made in relation to an operation on the mainline railway: reg 2(1). For the meaning of 'mainline railway' see PARA 231 note 18 ante; and for the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to amended safety certificates see PARA 239 post; as to safety authorisations see PARA 240 post and as to amended safety authorisations see PARA 242 post.

5 Ibid reg 7(1)(b)(ii). The text refers to the information set out in Sch 2 Pt 2 (paras 3-7) (see heads (A) to (E) in the text): see reg 7(1)(b)(ii). For these purposes, 'non-mainline application' means an application for: (1) a safety certificate or an amended safety certificate; or (2) a safety authorisation or an amended safety authorisation, made in relation to an operation on a transport system other than the mainline railway: reg 2(1). For the meaning of 'transport system' see PARA 231 ante.

6 Ibid reg 7(1)(b). An employer who makes an application for a safety certificate must, in relation to its preparation, consult safety representatives within the meaning of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 450) and such other employees as he is required to consult by virtue of the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 451): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(9).

Head (2) in the text is subject to reg 17(1), (2): see reg 7(1)(b). Accordingly, where an application is made under the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 for a safety certificate or safety authorisation or for an amended safety certificate or safety authorisation which relates to

an operation on the mainline railway and on a transport system other than the mainline railway, then: (1) one application may be made for that operation but it must be split into separate parts for the mainline railway and the other transport system (reg 17(1)(a)); and (2) the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 apply to those parts as if they were a mainline application and a non-mainline application (reg 17(1)(b)), except that where the same information is required it need not be stated twice (reg 17(1)). A transport operator may make one application for an operation in relation to which he requires both a safety certificate and a safety authorisation or an amended safety certificate and an amended safety authorisation but: (a) such an application must be split into separate parts relating to the safety authorisation and the safety certificate (reg 17(2)(a)); and (b) the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 apply to those parts as if they were an application for a safety authorisation and a safety certificate or an amended safety authorisation and an amended safety certificate (reg 17(2)(b)), except that where the same information is required it need not be stated twice (reg 17(2)). For the meaning of 'transport operator' see PARA 232 note 4 ante.

7 Ibid reg 7(1)(c).

8 Ibid Sch 2 para 1. For these purposes, 'Part A of a safety certificate' means that part of a safety certificate certifying the matters set out in reg 7(4)(b)(i) (see PARA 238 post) and related expressions must be construed accordingly: reg 2(1).

9 Ibid Sch 2 para 1(a). See note 10 infra.

10 Ibid Sch 2 para 1(b)(i). The text refers to a copy of a current certificate issued to the applicant by the Office of Rail Regulation (other than a deemed safety certificate) or a safety authority in another Member State under provisions giving effect to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive': see PARA 30 ante) (OJ L164, 30.04.2004, p 44) art 10(2)(a) which relates to an equivalent railway operation: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 2 para 1(b)(i). For these purposes, 'safety authority' means: (1) as regards a Member State other than the United Kingdom, the authority established in that state in accordance with Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) art 16(1); and (2) as regards Great Britain, the Office of Rail Regulation: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1). 'Deemed safety certificate' must be construed in accordance with reg 29(7), Sch 5 para 1(a): reg 2(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante; and for the meaning of 'United Kingdom' see PARA 31 note 2 ante.

Where an applicant sends to the Office of Rail Regulation in relation to a mainline application the matters specified in Sch 2 para 1(a) (see head (a)(i) in the text) and Sch 2 para 1(b)(i), and the Office of Rail Regulation is satisfied that the certificate in question is for an equivalent operation to that in respect of which the application is made, then that certificate is deemed to be Part A of the safety certificate for the operation in respect of which the application is made: reg 7(2).

11 For the meaning of 'safety management system' see PARA 232 note 4 ante.

12 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 2 para 1(b)(ii). The text refers to the requirements set out in reg 5(1)-(4) (as to which see PARA 232 ante): see Sch 2 para 1(b)(ii).

13 Ibid Sch 2 para 2. For these purposes, 'Part B of a safety certificate' means that part of a safety certificate certifying the matters set out in reg 7(4)(b)(ii) (see PARA 238 post) and related expressions must be construed accordingly: reg 2(1).

14 For the meaning of 'technical specifications for interoperability' (TSIs) see PARA 232 note 11 ante.

15 For the meaning of 'national safety rules' see PARA 232 note 11 ante.

16 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 2 para 2(a).

Where information is submitted concerning an interoperability constituent or a subsystem which is subject to and complies with the requirements of the Railways (Interoperability) Regulations 2006, SI 2006/397 then only brief details need be supplied concerning compliance of such constituents or subsystems with relevant TSIs and other requirements of those Regulations: Interpretation Act 1978 s 17(2)(b); Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 2 para 2. For the meanings of 'interoperability constituent' and 'subsystem' for these purposes see PARA 210 note 5 ante; definitions applied by Sch 2 para 2, by virtue of the Interpretation Act 1978 s 17(2)(b).

17 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 2 para 2(b). See note 16 supra.

18 For the meaning of 'rolling stock' see PARA 82 note 2 ante; definition applied by ibid reg 2(1).

19 Ibid Sch 2 para 2(c). See note 16 *supra*.

20 Ibid Sch 2 para 3.

21 Ibid Sch 2 para 4. The text refers to the requirements set out in reg 6 (as to which see PARA 233 *ante*): see Sch 2 para 4.

22 Ibid Sch 2 para 5(a).

23 Ibid Sch 2 para 5(b).

24 Ibid Sch 2 para 5.

25 Ibid Sch 2 para 6. The text refers to the relevant statutory provisions referred to in Sch 2 para 5(a) (see the text and note 22 *supra*): see Sch 2 para 6.

26 Ibid Sch 2 para 7. The text refers to the relevant statutory provisions referred to in Sch 2 para 5(a) (see the text and note 22 *supra*): see Sch 2 para 7.

27 Ibid reg 17(3)(a)(i). An applicant who makes an application in respect of a safety certificate pursuant to reg 7 (see the text and notes 1-7 *supra*) must, when sending the application, notify the Office of Rail Regulation of an address in Great Britain (the 'notified address') for the purposes of reg 21 (sending, issuing, and keeping of documents and making them available for public inspection: see PARA 251 *post*): reg 21(3).

28 For these purposes, 'affected party' means, for a document sent or issued in relation to a safety certificate or an application for a safety certificate: (1) any relevant infrastructure manager (ibid reg 17(10)(a)(i)); (2) a trade union which is a recognised trade union within the meaning of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1) (definition as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 450) in relation to employees of the operator or applicant employed in relation to the operation in question (Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(10)(a)(ii)); and (3) the Rail Passengers' Council and the London Transport Users' Committee where, in each case, it represents passengers' interests in relation to the operation in question (reg 17(10)(a)(iii)). 'Relevant infrastructure manager' means the infrastructure manager for any infrastructure used in relation to the operation in question: reg 2(1). For the meaning of 'infrastructure' see PARA 231 *ante*; and for the meaning of 'infrastructure manager' see PARA 232 note 4 *ante*. As to the Rail Passengers' Council and the London Transport Users' Committee see PARA 48 *et seq ante*.

29 Ibid reg 17(3). The text refers to the time for making representations to the Office of Rail Regulation pursuant to reg 17(6) (see the text and notes 30-31 *infra*): see reg 17(3).

30 Ibid reg 17(6)(a). Any information sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1).

31 Ibid reg 17(6)(b).

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238. Granting of safety certificates.

Within four months of the date of receipt of the application for a safety certificate¹, the Office of Rail Regulation² must³:

- 887 (1) issue a safety certificate for the operation in question⁴; or
- 888 (2) notify the applicant that it has refused the application⁵,

and in either case must give reasons for its decision⁶. Where the Office of Rail Regulation issues a safety certificate⁷, or a notice refusing an application for a safety certificate⁸, then that Office must at the same time either copy it and the reasons given for its decision to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed)⁹.

A safety certificate must:

- 889 (a) specify the type and extent of the operation in respect of which it is issued¹⁰;
- 890 (b) certify acceptance by the Office of Rail Regulation that the applicant has provided sufficient evidence¹¹:

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- 49. (i) to demonstrate that the safety management system¹² of the applicant meets the specified requirements in respect of a mainline application¹³ or in respect of a non-mainline application¹⁴; and

- 50. (ii) of the provisions adopted by the applicant to meet the requirements that are necessary to ensure safe operation on the transport system¹⁵ in question¹⁶,

26

- 891 and reference the information on which such acceptance is based¹⁷; and
- 892 (c) be valid for no longer than five years from the date of issue¹⁸.

Before the expiry of a safety certificate, the holder of that safety certificate may apply to the Office of Rail Regulation for a further safety certificate to be issued for the operation in question¹⁹. An application for a further safety certificate must set out particulars of any changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation²⁰.

¹ For the meaning of 'safety certificate' see PARA 232 note 6 ante. As to applications for safety certificates see PARA 237 ante.

² As to the Office of Rail Regulation see PARA 49 et seq ante.

³ Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 7(3).

⁴ Ibid reg 7(3)(a). Any certificate issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). As to the meaning of 'writing' see PARA 236 note 5 ante.

5 Ibid reg 7(3)(b).

6 Ibid reg 7(3).

The period of four months for the Office of Rail Regulation to make a decision referred to in reg 7(3) does not start to run: (1) until the expiry of the 28 day period referred to in reg 17(6) (representations made to the Office of Rail Regulation: see PARA 237 ante) (reg 17(7)(a)); or (2) until the date of receipt of the last information requested pursuant to reg 17(5) (reg 17(7)(b)), whichever is the later (reg 17(7)). As to transitional provisions see regs 17(7)(c), (8), 29(7), Sch 5. The Office of Rail Regulation may, upon receipt of an application for a safety certificate, or of any further information requested under reg 17(5), request as soon as reasonably possible such further information as it may reasonably require, and the applicant must provide such information as soon as reasonably possible: reg 17(5). Where an applicant sends further information to the Office of Rail Regulation pursuant to reg 17(5) (reg 17(3)(a)(ii)), then he must at the same time either copy it to any affected party or notify any affected party without delay that the further information has been sent (and of the address of the website where those documents may be accessed and how they may be accessed) (reg 17(3)). For the meaning of 'affected party' for these purposes see PARA 237 note 28 ante. Any request for information issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

7 Ibid reg 17(4)(a). The text refers to a safety certificate issued other than to an operator of last resort: see reg 17(4)(a). For these purposes, 'operator of last resort' means a transport operator appointed by the Secretary of State to provide transport services in accordance with the Railways Act 1993 s 30 (as substituted and amended) (see PARA 138 ante): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1). For the meaning of 'transport operator' see PARA 232 note 4 ante. As to the Secretary of State see PARA 35 ante.

8 Ibid reg 17(4)(c).

9 Ibid reg 17(4). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). The European Railway Agency also must be notified when a safety certificate is issued: see PARA 247 post.

10 Ibid reg 7(4)(a).

11 Ibid reg 7(4)(b).

12 For the meaning of 'safety management system' see PARA 232 note 4 ante.

13 Ie the requirements set out in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 5(1)-(4) (as to which see PARA 232 ante): see reg 7(4)(b)(i). For the meaning of 'mainline application' see PARA 237 note 4 ante.

14 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 7(4)(b)(i). The text refers to the requirements set out in reg 6 (as to which see PARA 233 ante): see reg 7(4)(b)(i). Head (i) in the text is subject to reg 7(2) (deemed Part A of the certificate: see PARA 237 note 10 ante): see reg 7(4)(b)(i). For the meaning of 'non-mainline application' see PARA 237 note 5 ante.

15 For the meaning of 'transport system' see PARA 231 ante.

16 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 7(4)(b)(ii). In reg 7(4)(b)(ii), 'requirements' means: (1) in relation to a mainline application, the technical specifications for interoperability (TSIs), national safety rules and other safety requirements referred to in reg 7(1)(b), Sch 2 para 2(a) (see PARA 237 ante) (reg 7(5)(a)); and (2) in relation to a non-mainline application, the relevant statutory provisions, technical specifications and procedures referred to in Sch 2 para 5 (see PARA 237 ante) (reg 7(5)(b)). For the meanings of 'national safety rules' and 'technical specifications for interoperability' (TSIs) see PARA 232 note 11 ante.

17 Ibid reg 7(4)(b).

18 Ibid reg 7(4)(c). The period of validity must be indicated in the safety certificate: reg 7(4)(c). Where Part A of the certificate is deemed to be such a Part A in accordance with reg 7(2) (see PARA 237 note 10 ante) that period expires on or before the date of expiry of the certificate which is deemed to be the Part A: reg 7(4)(c). For the meaning of 'Part A of a safety certificate' see PARA 237 note 8 ante.

19 Ibid reg 9(1). An applicant who makes an application in respect of a safety certificate pursuant to reg 9 must, when sending the application, notify the Office of Rail Regulation of an address in Great Britain (the 'notified address') for the purposes of reg 21 (sending, issuing, and keeping of documents and making them available for public inspection: see PARA 251 post): reg 21(3). Any application sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI

2006/599 must be in writing and in English: reg 21(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

20 Ibid reg 9(2). For the purposes of an application for, and the issuing of, a further safety certificate, reg 7(1)(c) (as to which see PARA 237 ante), reg 7(2) (as to which see PARA 237 ante), reg 7(3) (as to which see the text and notes 1-6 supra) and reg 7(4) (as to which see the text and notes 10-18 supra) apply as they apply to an application for, and the issuing of, a first safety certificate under reg 7: reg 9(3).

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239. Amended safety certificates.

Where it is proposed that the type or extent of an operation in respect of which a safety certificate¹ has been issued² is to be substantially changed then the holder of the safety certificate must apply to the Office of Rail Regulation³ for the safety certificate to be amended accordingly and the substantial change must not be made until the safety certificate is so amended⁴. Such an application for an amended safety certificate must:

- 893 (1) provide details of the change proposed⁵;
- 894 (2) provide details of any consequential changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation⁶; and
- 895 (3) if it is a mainline application⁷, clearly indicate in respect of which part of the safety certificate any information is provided⁸.

Where an applicant sends an application for an amended safety certificate⁹, then he must at the same time either copy it to any affected party¹⁰ or notify any affected party without delay that the application has been sent (and of the address of the website where those documents may be accessed and how they may be accessed) and, in either case, must notify such a party, where the document in question is an application, of the time for making representations to the Office of Rail Regulation¹¹. Where an affected party receives a copy of an application, then he may make any representations in writing to the Office of Rail Regulation, which are relevant to the application or notice, within 28 days of the date of issue of the application in question¹², and the Office of Rail Regulation must consider any such representations in making its decision¹³.

Within four months of the date of receipt of the application, the Office of Rail Regulation must¹⁴:

- 896 (a) issue a notice making any necessary amendments to the matters set out in the safety certificate¹⁵; or
- 897 (b) notify the applicant that it has refused the application¹⁶,

and in either case must give reasons for its decision¹⁷.

Where the Office of Rail Regulation issues a notice amending a safety certificate¹⁸ or a notice refusing an application for an amended safety certificate¹⁹, then that Office must at the same time either copy it and the reasons given for its decision to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed)²⁰.

1 For the meaning of 'safety certificate' see PARA 232 note 6 ante.

2 As to applications for safety certificates see PARA 237 ante; and as to the issue of safety certificates see PARA 238 ante.

3 As to the Office of Rail Regulation see PARA 49 et seq ante. Any application sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1). As to the meaning of 'writing' see PARA 236 note 5 ante.

4 Ibid reg 8(1). An employer who makes an application for an amended safety certificate must, in relation to its preparation, consult safety representatives within the meaning of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 450) and such other employees as he is required to consult by virtue of the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 451): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(9). As to the circumstances in which the Office of Rail Regulation may direct the holder of a safety certificate to apply for an amendment to its safety certificate see PARA 244 post.

5 Ibid reg 8(2)(a).

6 Ibid reg 8(2)(b).

7 For the meaning of 'mainline application' see PARA 237 note 4 ante.

8 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 8(2)(c). For the meaning of 'Part A of a safety certificate' see PARA 237 note 8 ante; and for the meaning of 'Part B of a safety certificate' see PARA 237 note 13 ante.

Where Part A of a safety certificate in respect of which an application is made is deemed to be such a Part A in accordance with reg 7(2) (see PARA 237 note 10 ante), then the Office of Rail Regulation must: (1) consider whether the Part A in question would still be for an equivalent operation if the change were made (reg 8(3)(a)); and (2) if it considers that it would not be equivalent, notify the applicant in accordance with reg 8(4) (see the text and notes 14-17 infra) that it has refused the application and that he should apply for a new safety certificate under reg 7 (see PARA 237 ante) if he wants to make the proposed change (reg 8(3)(b)), except that, in relation to Part B of the safety certificate, he only need provide the details set out in heads (1) to (3) in the text (reg 8(3)).

9 Ibid reg 17(3)(a)(i).

10 For the meaning of 'affected party' for these purposes see PARA 237 note 28 ante.

11 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(3). The text refers to the time for making representations to the Office of Rail Regulation pursuant to reg 17(6) (see the text and notes 12-13 infra): see reg 17(3).

12 Ibid reg 17(6)(a).

13 Ibid reg 17(6)(b). Any information sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1).

14 Ibid reg 8(4).

15 Ibid reg 8(4)(a). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

16 Ibid reg 8(4)(b).

17 Ibid reg 8(4).

The period of four months for the Office of Rail Regulation to make a decision referred to in reg 8(4) does not start to run: (1) until the expiry of the 28 day period referred to in reg 17(6) (representations made to the Office of Rail Regulation: see the text and notes 12-13 supra) (reg 17(7)(a)); or (2) until the date of receipt of the last information requested pursuant to reg 17(5) (reg 17(7)(b)), whichever is the later (reg 17(7)). As to transitional provisions see regs 17(7)(c), (8), 29(7), Sch 5. The Office of Rail Regulation may upon receipt of an application for an amended safety certificate, or of any further information requested under reg 17(5), request as soon as reasonably possible such further information as it may reasonably require, and the applicant must provide such information as soon as reasonably possible: reg 17(5). Where an applicant sends further information to the Office of Rail Regulation pursuant to reg 17(5) (reg 17(3)(a)(ii)), then he must at the same time either copy it to any affected party or notify any affected party without delay that the further information has been sent (and of the address of the website where those documents may be accessed and how they may be accessed) (reg 17(3)). Any request for information issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

18 Ibid reg 17(4)(b).

19 Ibid reg 17(4)(c).

20 Ibid reg 17(4). The European Railway Agency also must be notified: see PARA 247 post.

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240. Applications for safety authorisations.

An application for a first safety authorisation¹ in respect of infrastructure² must³:

898 (1) be made to the Office of Rail Regulation⁴;

899 (2) set out particulars of⁵:

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51. (a) the infrastructure in question⁶;

52. (b) how the safety management system⁷ of the applicant meets specified requirements in relation to a mainline application⁸ or in relation to a non-mainline application⁹; and

53. (c) how the provisions adopted by the applicant meet any requirements which are necessary for the safe design, maintenance and operation of the infrastructure in question¹⁰.

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Where an applicant sends an application for a safety authorisation¹¹, then he must at the same time either copy it to any affected party¹² or notify any affected party without delay that the application has been sent (and of the address of the website where those documents may be accessed and how they may be accessed) and, in either case, must notify such a party, where the document in question is an application, of the time for making representations to the Office of Rail Regulation¹³. Where an affected party receives a copy of an application then he may make any representations in writing to the Office of Rail Regulation, which are relevant to the application or notice, within 28 days of the date of issue of the application in question¹⁴, and the Office of Rail Regulation must consider any such representations in making its decision¹⁵.

1 For the meaning of 'safety authorisation' see PARA 232 note 10 ante.

2 For the meaning of 'infrastructure' see PARA 231 ante.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 10(1).

4 Ibid reg 10(1)(a). Any application sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1). As to the meaning of 'writing' see PARA 236 note 5 ante. As to the Office of Rail Regulation see PARA 49 et seq ante.

5 Ibid reg 10(1)(b). An employer who makes an application for a safety authorisation must, in relation to its preparation, consult safety representatives within the meaning of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 450) and such other employees as he is required to consult by virtue of the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 451): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(9).

Heads (2)(a) to (2)(c) in the text are subject to reg 17(1), (2) (as to which see PARA 237 note 6 ante): see reg 10(1)(b).

6 Ibid reg 10(1)(b)(i).

7 For the meaning of 'safety management system' see PARA 232 note 4 ante.

8 le the requirements set out in relation to a mainline application in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 5(7) (as to which see PARA 232 ante): see reg 10(1)(b)(ii). For the meaning of 'mainline application' see PARA 237 note 4 ante.

9 Ibid reg 10(1)(b)(ii). The text refers to the requirements set out in relation to a non-mainline application in reg 6 (as to which see PARA 233 ante): see reg 10(1)(b)(ii). For the meaning of 'non-mainline application' see PARA 237 note 5 ante.

10 Ibid reg 10(1)(b)(iii).

11 Ibid reg 17(3)(a)(i). An applicant who makes an application in respect of a safety authorisation pursuant to reg 10 (see the text and notes 1-10 supra) must, when sending the application, notify the Office of Rail Regulation of an address in Great Britain (the 'notified address') for the purposes of reg 21 (sending, issuing, and keeping of documents and making them available for public inspection: see PARA 251 post): reg 21(3). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

12 For these purposes, 'affected party' means, for a document sent or issued in relation to a safety authorisation or an application for a safety authorisation: (1) any transport undertaking that is or will be operating on the infrastructure of the applicant or infrastructure manager in question (ibid reg 17(10)(b)(i)); (2) any infrastructure manager who manages infrastructure which interfaces or will interface with the infrastructure of the infrastructure manager in question (reg 17(10)(b)(ii)); and (3) any person falling within reg 17(10)(a)(ii) or reg 17(10)(a)(iii) (see PARA 237 note 28 ante) (reg 17(10)(b)(iii)). For the meanings of 'infrastructure manager' and 'transport undertaking' see PARA 232 note 4 ante.

13 Ibid reg 17(3). The text refers to the time for making representations to the Office of Rail Regulation pursuant to reg 17(6) (see the text and notes 14-15 infra): see reg 17(3).

14 Ibid reg 17(6)(a). Any information sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1).

15 Ibid reg 17(6)(b).

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241. Granting of safety authorisations.

Within four months of the date of receipt of the application for a safety authorisation¹, the Office of Rail Regulation² must³:

- 900 (1) issue a safety authorisation in relation to the infrastructure⁴ in question⁵; or
- 901 (2) notify the applicant that it has refused the application⁶,

and in either case must give reasons for its decision⁷.

Where the Office of Rail Regulation issues a safety authorisation⁸, or a notice refusing an application for a safety authorisation⁹, then that Office must at the same time either copy it and the reasons given for its decision to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed)¹⁰.

A safety authorisation must:

- 902 (a) specify the infrastructure in respect of which the authorisation is issued¹¹;
- 903 (b) accept that the applicant has provided sufficient evidence to demonstrate that the safety management system¹² of the applicant meets the specified requirements in relation to a mainline application¹³ or in relation to a non-mainline application¹⁴;
- 904 (c) accept that the applicant has provided sufficient evidence of the provisions adopted by the applicant to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question¹⁵;
- 905 (d) reference the information on which the acceptance referred to in head (b) and head (c) above is based¹⁶; and
- 906 (e) be valid for no longer than five years from the date of issue¹⁷.

Before the expiry of a safety authorisation the holder of that safety authorisation may apply to the Office of Rail Regulation for a further safety authorisation to be issued for the infrastructure in question¹⁸. An application for a further safety authorisation must set out particulars of any changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation¹⁹.

1 For the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to applications for safety authorisations see PARA 240 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 10(2).

4 For the meaning of 'infrastructure' see PARA 231 ante.

5 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 10(2)(a). Any authorisation issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport

Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). As to the meaning of 'writing' see PARA 236 note 5 ante.

6 Ibid reg 10(2)(b). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

7 Ibid reg 10(2)(c).

The period of four months for the Office of Rail Regulation to make a decision referred to in reg 10(2) does not start to run: (1) until the expiry of the 28 day period referred to in reg 17(6) (representations made to the Office of Rail Regulation: see PARA 240 ante) (reg 17(7)(a)); or (2) until the date of receipt of the last information requested pursuant to reg 17(5) (reg 17(7)(b)), whichever is the later (reg 17(7)). As to transitional provisions see regs 17(7)(c), (8), 29(7), Sch 5. The Office of Rail Regulation may upon receipt of an application for a safety authorisation, or of any further information requested under reg 17(5), request as soon as reasonably possible such further information as it may reasonably require, and the applicant must provide such information as soon as reasonably possible: reg 17(5). Where an applicant sends further information to the Office of Rail Regulation pursuant to reg 17(5) (reg 17(3)(a)(ii)), then he must at the same time either copy it to any affected party or notify any affected party without delay that the further information has been sent (and of the address of the website where those documents may be accessed and how they may be accessed) (reg 17(3)). For the meaning of 'affected party' for these purposes see PARA 240 note 12 ante. Any request for information issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English (reg 21(2)); and any information so sent to the Office of Rail Regulation also must be in writing and in English (reg 21(1)).

8 Ibid reg 17(4)(a). The text refers to a safety certificate issued other than to an operator of last resort: see reg 17(4)(a). For the meaning of 'operator of last resort' see PARA 238 note 7 ante.

9 Ibid reg 17(4)(c).

10 Ibid reg 17(4). The European Railway Agency also must be notified: see PARA 247 post.

11 Ibid reg 10(3)(a).

12 For the meaning of 'safety management system' see PARA 232 note 4 ante.

13 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 10(3)(b)(i). The text refers to the requirements set out in reg 5(7) (as to which see PARA 232 ante): see reg 10(3)(b)(i). For the meaning of 'mainline application' see PARA 237 note 4 ante.

14 Ibid reg 10(1)(b)(ii). The text refers to the requirements set out in reg 6 (as to which see PARA 233 ante): see reg 10(1)(b)(ii). For the meaning of 'non-mainline application' see PARA 237 note 5 ante.

15 Ibid reg 10(3)(c).

16 Ibid reg 10(3)(d).

17 Ibid reg 10(3)(e). The period of validity must be indicated in the safety certificate: reg 10(3)(e).

18 Ibid reg 12(1). An applicant who makes an application in respect of a safety authorisation pursuant to reg 12 must, when sending the application, notify the Office of Rail Regulation of an address in Great Britain (the 'notified address') for the purposes of reg 21 (sending, issuing, and keeping of documents and making them available for public inspection: see PARA 251 post): reg 21(3). Any application sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

19 Ibid reg 12(2). For the purposes of an application for, and the issuing of, a further safety certificate, reg 10(2) (as to which see the text and notes 1-7 supra) and reg 10(3) (as to which see the text and notes 11-17 supra) apply as they apply to an application for, and the issuing of, a first safety certificate under reg 10: reg 12(3).

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242. Amended safety authorisations.

Where it is proposed that a substantial change is to be made to¹:

- 907 (1) the infrastructure² in respect of which a safety authorisation³ has been issued⁴;
- 908 (2) any energy supply, not falling within head (1) above, which is used in connection with the infrastructure in question⁵; or
- 909 (3) the principles of operation and maintenance of such infrastructure or energy supply⁶,

then the holder of the safety authorisation must apply to the Office of Rail Regulation⁷ for the safety authorisation to be amended accordingly and the substantial change must not be made until the safety authorisation is so amended⁸. Such an application for an amended safety authorisation must provide details of:

- 910 (a) the substantial changes proposed⁹; and
- 911 (b) any consequential changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation¹⁰.

Where an applicant sends an application for an amended safety authorisation¹¹, then he must at the same time either copy it to any affected party¹² or notify any affected party without delay that the application has been sent (and of the address of the website where those documents may be accessed and how they may be accessed) and, in either case, must notify such a party, where the document in question is an application, of the time for making representations to the Office of Rail Regulation¹³. Where an affected party receives a copy of an application, then he may make any representations in writing to the Office of Rail Regulation, which are relevant to the application or notice, within 28 days of the date of issue of the application in question¹⁴, and the Office of Rail Regulation must consider any such representations in making its decision¹⁵.

Within four months of the date of receipt of the application the Office of Rail Regulation must¹⁶:

- 912 (i) issue a notice making any necessary amendments to the matters set out in the safety authorisation¹⁷; or
- 913 (ii) notify the applicant that it has refused the application¹⁸,

and in either case must give reasons for its decision¹⁹.

Where the Office of Rail Regulation issues a notice amending a safety authorisation²⁰ or a notice refusing an application for an amended safety authorisation²¹, then that Office must at the same time either copy it and the reasons given for its decision to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed)²².

1 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 11(1).

2 For the meaning of 'infrastructure' see PARA 231 ante.

3 For the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to applications for safety authorisations see PARA 240 ante.

4 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 11(1)(a). As to the issue of safety authorisations see PARA 241 ante.

5 Ibid reg 11(1)(b).

6 Ibid reg 11(1)(c).

7 As to the Office of Rail Regulation see PARA 49 et seq ante.

8 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 11(1). Any application sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1). As to the meaning of 'writing' see PARA 236 note 5 ante. An employer who makes an application for an amended safety authorisation must, in relation to its preparation, consult safety representatives within the meaning of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 450) and such other employees as he is required to consult by virtue of the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 451): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(9). As to the circumstances in which the Office of Rail Regulation may direct the holder of a safety authorisation to apply for an amendment to its safety authorisation see PARA 244 post.

9 Ibid reg 11(2)(a).

10 Ibid reg 11(2)(b).

11 Ibid reg 17(3)(a)(i).

12 For the meaning of 'affected party' for these purposes see PARA 240 note 12 ante.

13 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(3). The text refers to the time for making representations to the Office of Rail Regulation pursuant to reg 17(6) (see the text and notes 14-15 infra): see reg 17(3).

14 Ibid reg 17(6)(a). Any information sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1).

15 Ibid reg 17(6)(b).

16 Ibid reg 11(3).

17 Ibid reg 11(3)(a). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

18 Ibid reg 11(3)(b).

19 Ibid reg 11(3).

The period of four months for the Office of Rail Regulation to make a decision referred to in reg 11(3) does not start to run: (1) until the expiry of the 28 day period referred to in reg 17(6) (representations made to the Office of Rail Regulation: see the text and notes 14-15 supra) (reg 17(7)(a)); or (2) until the date of receipt of the last information requested pursuant to reg 17(5) (reg 17(7)(b)), whichever is the later (reg 17(7)). As to transitional provisions see regs 17(7)(c), (8), 29(7), Sch 5. The Office of Rail Regulation may upon receipt of an application for an amended safety authorisation, or of any further information requested under reg 17(5), request as soon as reasonably possible such further information as it may reasonably require, and the applicant must provide such information as soon as reasonably possible: reg 17(5). Any request for information issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). Where an applicant sends further information to the Office of Rail Regulation pursuant to reg 17(5) (reg 17(3)(a)(ii)), then he must at the same time either copy it to any affected party or notify any affected party without delay that the further information has been sent (and of

the address of the website where those documents may be accessed and how they may be accessed) (reg 17(3)).

20 Ibid reg 17(4)(b).

21 Ibid reg 17(4)(c).

22 Ibid reg 17(4). The European Railway Agency also must be notified: see PARA 247 post.

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243. Notice of changes by holder of a safety certificate or a safety authorisation.

The holder of a safety certificate¹ or a safety authorisation² must, without delay, notify the Office of Rail Regulation³:

- 914 (1) of any major changes: (a) to the means by which he meets the specified requirements relating to the safety management system⁴ which is appropriate to the operation in question⁵; (b) in the case of a transport undertaking, to the provisions adopted by him to meet any requirements necessary to ensure safe operation on the transport system⁶ in relation to the operation in question⁷; or (c) in the case of an infrastructure manager, to the provisions adopted by him to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question⁸;
- 915 (2) when persons first commence work directly relating to the operation which is of a type which has not previously been carried out in relation to that operation⁹; or
- 916 (3) when types of vehicle¹⁰ which are new to the operation in question are first introduced¹¹.

Where the holder of a safety certificate or a safety authorisation sends such a notice¹², then he must at the same time copy it to any affected party¹³.

1 For the meaning of 'safety certificate' see PARA 232 note 6 ante. As to applications for safety certificates see PARA 237 ante; and as to the issue of safety certificates see PARA 238 ante.

2 For the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to applications for safety authorisations see PARA 240 ante; and as to the issue of safety authorisations see PARA 241 ante.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 13. Any notice sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1). As to the meaning of 'writing' see PARA 236 note 5 ante. As to the Office of Rail Regulation see PARA 49 et seq ante.

4 For the meaning of 'safety management system' see PARA 232 note 4 ante.

5 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 13(a)(i). The text refers to: (1) the requirements set out in reg 5(1)-(4) (as to which see PARA 232 ante) in relation to an operation of a transport undertaking on the mainline railway (see reg 13(a)(i)(aa)); (2) the requirements set out in reg 5(7) (as to which see PARA 232 ante) in relation to an operation of an infrastructure manager on the mainline railway (see reg 13(a)(i)(bb)); or (3) the requirements set out in reg 6 (as to which see PARA 233 ante) in relation to an operation which is not carried out on the mainline railway (see reg 13(a)(i)(cc)). For the meaning of 'infrastructure' see PARA 231 ante; for the meaning of 'mainline railway' see PARA 231 note 18 ante; and for the meanings of 'infrastructure manager' and 'transport undertaking' see PARA 232 note 4 ante.

6 For the meaning of 'transport system' see PARA 231 ante.

7 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 13(a)(ii).

8 Ibid reg 13(a)(iii).

9 Ibid reg 13(b).

10 As to the meaning of 'vehicle' see PARA 231 note 2 ante.

11 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 13(c).

12 Ibid reg 17(3)(b). An employer who sends a notice to the Office of Rail Regulation under reg 13 must, in relation to its preparation, consult safety representatives within the meaning of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 450) and such other employees as he is required to consult by virtue of the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 451): Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(9).

13 See ibid reg 17(3). For the meaning of 'affected party', in relation to safety certificates, see PARA 237 note 28 ante and, in relation to safety authorisations, see PARA 240 note 12 ante.

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244. Direction to apply for an amended safety certificate or safety authorisation.

Where there is a substantial change to any of the relevant statutory provisions which make provision in relation to the safety of the transport system¹ in question, then the Office of Rail Regulation² may direct the holder of either a safety certificate³ or a safety authorisation⁴ to apply to that Office for an amendment to its safety certificate or safety authorisation⁵. Such a direction must:

- 917 (1) state the reasons why the Office of Rail Regulation considers that it is necessary for the transport operator⁶ to apply for an amended safety certificate or safety authorisation⁷;
- 918 (2) identify the information:
 - 29 54. (a) on the basis of which the Office of Rail Regulation's acceptance⁸ was made upon issue or amendment of the safety certificate or safety authorisation⁹; or
 - 55. (b) notified to the Office of Rail Regulation¹⁰,
 - 30 919 which it considers will have to be changed¹¹; and
 - 920 (3) specify the period, being not less than 28 days from the date of issue of the direction, within which the application must be sent to the Office of Rail Regulation¹².

An application for such an amended safety certificate or safety authorisation¹³ must provide details of any changes to any information:

- 921 (i) sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation¹⁴; and
- 922 (ii) which is consequential upon the relevant change to the relevant statutory provisions¹⁵.

Where the Office of Rail Regulation issues a direction to apply for an amended safety certificate or safety authorisation¹⁶, then that Office must at the same time copy it to any affected party¹⁷ or notify any affected party that the relevant document has been issued (and of the address of the website where the document may be accessed and how it may be accessed)¹⁸.

1 For the meaning of 'transport system' see PARA 231 ante. As to the statutory provisions made in relation to the safety of transport systems see PARA 231 et seq ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante.

3 For the meaning of 'safety certificate' see PARA 232 note 6 ante. As to applications for safety certificates see PARA 237 ante; and as to the issue of safety certificates see PARA 238 ante.

4 For the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to applications for safety authorisations see PARA 240 ante; and as to the issue of safety authorisations see PARA 241 ante.

5 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 14(1). Any direction issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). As to the meaning of 'writing' see PARA 236 note 5 ante. As to applications made by the holder to amend a safety certificate when not under direction see PARA 239 ante; and as to applications made by the holder to amend a safety authorisation when not under direction see PARA 242 ante.

6 For the meaning of 'transport operator' see PARA 232 note 4 ante.

7 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 14(2)(a). Any statement issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

8 I.e. the acceptance referred to in *ibid* reg 7(4) (granting of safety certificates: see PARA 238 ante) or reg 10(3) (granting of safety authorisations: see PARA 241 ante): see reg 14(2)(b)(i).

9 *Ibid* reg 14(2)(b)(i).

10 *Ibid* reg 14(2)(b)(ii). The text refers to notification of changes made under reg 13 (see PARA 243 ante): see reg 14(2)(b)(ii).

11 *Ibid* reg 14(2)(b).

12 *Ibid* reg 14(2)(c).

13 I.e. made pursuant to *ibid* reg 14: see reg 14(3). For the purposes of an application for, and the issuing of, a notice of amendment to a safety certificate under reg 14, reg 8(2)(c), (4) (see PARA 239 ante) applies as it applies to an application for and issuing of an amendment to a safety certificate under reg 8 (see PARA 239 ante): reg 14(4). For the purposes of an application for, and the issuing of, a notice of amendment to a safety authorisation under reg 14, reg 11(3) (see PARA 242 ante) applies as it applies to an application for and issuing of an amendment to a safety authorisation under reg 11 (see PARA 242 ante): reg 14(5). Any application sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1).

14 *Ibid* reg 14(3)(a).

15 *Ibid* reg 14(3)(b).

16 *Ibid* reg 17(4)(d).

17 For the meaning of 'affected party', in relation to safety certificates, see PARA 237 note 28 ante and, in relation to safety authorisations, see PARA 240 note 12 ante.

18 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 17(4). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). The European Railway Agency also must be notified: see PARA 247 post.

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245. Revocation of safety certificate.

The Office of Rail Regulation¹ must revoke:

- 923 (1) either Part A or Part B of a safety certificate², if it is satisfied that the holder is no longer satisfying the conditions of that part of the safety certificate³ and that there is a significant risk arising as a result⁴;
- 924 (2) a safety certificate, if it is satisfied that the holder:
 - 31 56. (a) is no longer satisfying the conditions of that safety certificate⁵ and that there is a significant risk arising as a result⁶; or
 - 57. (b) is not operating a vehicle⁷ in relation to any infrastructure⁸ on a transport system as intended pursuant to that safety certificate and has not done so throughout the period of one year commencing with the date of issue of the safety certificate by the Office of Rail Regulation⁹.
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Before revoking any safety certificate (or Part A or Part B of such a certificate), the Office of Rail Regulation must¹⁰:

- 925 (i) notify the holder that: (A) it is considering revoking that safety certificate (or Part A or B of it) and the reasons why¹¹; (B) within a period specified in the notice, which must be not less than 28 days, the holder may make representations in writing to the Office of Rail Regulation or, if the holder so requests, may make oral representations to the Office of Rail Regulation¹²; and
- 926 (ii) consider any representations which are duly made and not withdrawn¹³.

Where the Office of Rail Regulation revokes a safety certificate (or Part A or B of it¹⁴), it must send to the holder with the notice of revocation a statement of the reasons why¹⁵; and where a notice revoking a safety certificate is issued¹⁶, then the Office of Rail Regulation must at the same time either copy it and the reasons given for its decision to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed)¹⁷.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 The Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 15(1) does not apply in relation to Part A of a safety certificate where it is deemed to be such a Part A in accordance with reg 7(2) (see PARA 237 note 10 ante): see reg 15(1). For the meaning of 'safety certificate' see PARA 232 note 6 ante; for the meaning of 'Part A of a safety certificate' see PARA 237 note 8 ante; and for the meaning of 'Part B of a safety certificate' see PARA 237 note 13 ante. As to applications for safety certificates see PARA 237 ante; and as to the issue of safety certificates see PARA 238 ante.

3 For the purposes of ibid reg 15, 'conditions' means, in relation to Part A of a safety certificate, any part of the requirements relating to the safety management system set out in reg 5(1)-(4) (as to which see PARA 232 ante) in relation to an operation of a transport undertaking on the mainline railway (see reg 15(2)(a)(i)); or the

requirements set out in reg 6 (as to which see PARA 233 ante) in relation to an operation which is carried out on a transport system other than the mainline railway (see reg 15(2)(a)(ii)). For these purposes, in relation to Part B of a safety certificate, 'conditions' means that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary to ensure safe operation on the transport system in question in relation to the operation in question: reg 15(2)(b). For the meaning of 'transport system' see PARA 231 ante; for the meaning of 'mainline railway' see PARA 231 note 18 ante; and for the meanings of 'safety management system' and 'transport undertaking' see PARA 232 note 4 ante.

4 Ibid reg 15(1)(a). For the meaning of 'risk' see PARA 232 note 10 ante; and for the meaning of 'significant safety risk' see PARA 232 note 27 ante.

5 For the purposes of ibid reg 15, 'conditions' means, in relation to a safety certificate, the matters referred to in relation to both Part A of a safety certificate and Part B of a safety certificate (see reg 15(2)(a), (b); and note 3 supra); reg 15(2)(c).

6 Ibid reg 15(1)(b)(i).

7 As to the meaning of 'vehicle' see PARA 231 note 2 ante.

8 For the meaning of 'infrastructure' see PARA 231 ante.

9 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 15(1)(b)(ii).

10 Ibid reg 15(3).

11 Ibid reg 15(3)(a)(i).

Where the Office of Rail Regulation issues a notice that it is considering revoking a safety certificate (reg 17(4)(e)), then that Office must at the same time either copy it to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed) (reg 17(4)). In either case, the Office of Rail Regulation must notify such a party, where the document in question is a notice that it is considering revocation as mentioned in reg 17(4)(e), of the time for making representations to the Office of Rail Regulation pursuant to reg 17(6) (see note 12 infra); reg 17(4). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). For the meaning of 'affected party' for these purposes see PARA 237 note 28 ante. As to the meaning of 'writing' see PARA 236 note 5 ante.

12 Ibid reg 15(3)(a)(ii).

Where an affected party receives a copy of a notice relating to revocation pursuant to reg 17(4)(e) (see note 11 supra), then he may make any representations in writing to the Office of Rail Regulation, which are relevant to the notice, within 28 days of the date of issue of the notice in question (but also see head (i)(B) in the text) (reg 17(6)(a)) and the Office of Rail Regulation must consider any such representations in making its decision (reg 17(6)(b)). Any information sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1).

13 Ibid reg 15(3)(b). See notes 11, 12 supra.

14 Where the Office of Rail Regulation revokes Part B of a safety certificate and Part A of that safety certificate is deemed to be Part A of a safety certificate pursuant to ibid reg 7(2) (see PARA 237 note 10 ante) and was issued by the safety authority in another Member State, then the Office of Rail Regulation must notify that safety authority as soon as reasonably possible of that revocation: reg 15(5). For the meaning of 'safety authority' see PARA 237 note 10 ante.

15 Ibid reg 15(4). Any statement issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

16 Ibid reg 17(4)(f).

17 Ibid reg 17(4). The European Railway Agency also must be notified: see PARA 247 post.

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246. Revocation of safety authorisations.

The Office of Rail Regulation¹ must revoke a safety authorisation² if it is satisfied that the holder is no longer satisfying the conditions of that safety authorisation³ and there is a significant risk arising as a result⁴.

Before revoking any safety authorisation, the Office of Rail Regulation must⁵:

- 927 (1) notify the holder that: (a) it is considering revoking that safety authorisation and the reasons why⁶; (b) within a period specified in the notice, which must be not less than 28 days, the holder may make representations in writing to the Office of Rail Regulation or, if the holder so requests, may make oral representations to the Office of Rail Regulation⁷; and
- 928 (2) consider any representations which are duly made and not withdrawn⁸.

Where the Office of Rail Regulation revokes a safety authorisation, it must send to the holder with the notice of revocation a statement of the reasons why⁹; and where a notice revoking a safety authorisation is issued¹⁰, then the Office of Rail Regulation must at the same time either copy it and the reasons given for its decision to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed)¹¹.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 For the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to applications for safety authorisations see PARA 240 ante; and as to the issue of safety authorisations see PARA 241 ante.

3 For the purposes of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 16, 'conditions' means: (1) any part of the requirements relating to the safety management system referred to in reg 5(7) (as to which see PARA 232 ante) in relation to an operation carried out on the mainline railway (reg 16(2)(a)(i)) or in reg 6 (as to which see PARA 233 ante) in relation to an operation carried out on a transport system other than the mainline railway (reg 16(2)(a)(ii)); or (2) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question (reg 16(2)(b)). For the meanings of 'infrastructure' and 'transport system' see PARA 231 ante; for the meaning of 'mainline railway' see PARA 231 note 18 ante; and for the meaning of 'safety management system' see PARA 232 note 4 ante.

4 Ibid reg 16(1). For the meaning of 'risk' see PARA 232 note 10 ante; and for the meaning of 'significant safety risk' see PARA 232 note 27 ante.

5 Ibid reg 16(3).

6 Ibid reg 16(3)(a)(i).

Where the Office of Rail Regulation issues a notice that it is considering revoking a safety authorisation (reg 17(4)(e)), then that Office must at the same time either copy it to any affected party or notify any affected party that the relevant document has been issued (and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed) (reg 17(4)). In either case, the Office of Rail Regulation must notify such a party, where the document in question is a notice that it is considering revocation as mentioned in reg 17(4)(e), of the time for making representations to the Office of Rail

Regulation pursuant to reg 17(6) (see note 7 *infra*): reg 17(4). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). For the meaning of 'affected party' for these purposes see PARA 237 note 28 *ante*. As to the meaning of 'writing' see PARA 236 note 5 *ante*.

7 Ibid reg 16(3)(a)(ii).

Where an affected party receives a copy of a notice relating to revocation pursuant to reg 17(4)(e) (see note 6 *supra*), then he may make any representations in writing to the Office of Rail Regulation, which are relevant to the notice, within 28 days of the date of issue of the notice in question (but also see head (1)(b) in the text) (reg 17(6)(a)) and the Office of Rail Regulation must consider any such representations in making its decision (reg 17(6)(b)). Any information sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1).

8 Ibid reg 16(3)(b). See notes 6-7 *supra*.

9 Ibid reg 16(4). Any statement issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2).

10 Ibid reg 17(4)(f).

11 Ibid reg 17(4). The European Railway Agency also must be notified: see PARA 247 *post*.

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247. Notifications of issue, amendment, revocation etc to the European Railway Agency.

The Office of Rail Regulation¹ must notify the European Railway Agency² of the issuing, amendment or revocation³ of Part A of a safety certificate⁴ or of a safety authorisation⁵ in relation to an operation on the mainline railway⁶ within one month of such issue, amendment or revocation⁷. Such a notice must include the following information in relation to the safety certificate or safety authorisation: (1) the name and address of the holder⁸; (2) its date of issue and period of validity⁹; (3) the operation or infrastructure¹⁰ in relation to which it was issued¹¹; and (4) where it relates to a revocation, the reasons for that decision¹².

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 For these purposes, 'European Railway Agency' means the Community agency for railway safety and interoperability established by Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency ('Agency Regulation') (OJ L164, 30.04.2004, p 1) (as to which see PARA 28 ante); Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1). Any notice issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). As to the meaning of 'writing' see PARA 236 note 5 ante.

3 Ie pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599: see reg 18(1).

4 Ibid reg 18(1)(a). For the meaning of 'safety certificate' see PARA 232 note 6 ante; for the meaning of 'Part A of a safety certificate' see PARA 237 note 8 ante. As to the issue of safety certificates see PARA 238 ante; as to their amendment see PARAS 239, 244 ante; and as to their revocation see PARA 245 ante.

5 Ibid reg 18(1)(b). For the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to the issue of safety authorisations see PARA 241 ante; as to their amendment see PARAS 242, 244 ante; and as to their revocation see PARA 246 ante.

6 For the meaning of 'mainline railway' see PARA 231 note 18 ante.

7 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 18(1).

8 Ibid reg 18(2)(a).

9 Ibid reg 18(2)(b).

10 For the meaning of 'infrastructure' see PARA 231 ante.

11 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 18(2)(c).

12 Ibid reg 18(2)(d).

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248. Appeals relating to safety certificates and authorisations.

A person who is aggrieved by:

- 929 (1) a decision of the Office of Rail Regulation¹ to refuse his application for a safety certificate² or safety authorisation³, or for an amended safety certificate⁴ or safety authorisation⁵;
- 930 (2) a direction of the Office of Rail Regulation to make an application to amend his safety certificate or safety authorisation⁶; or
- 931 (3) a decision of the Office of Rail Regulation to revoke his safety certificate or part of it⁷ or his safety authorisation⁸,

may appeal to the Secretary of State⁹.

Before the determination of an appeal, the Secretary of State must ask the appellant and the Office of Rail Regulation whether they wish to appear and be heard on the appeal¹⁰ and:

- 932 (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid¹¹;
- 933 (b) the Secretary of State must, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of doing so¹².

Where an appeal is made under head (1) or head (3) above, the decision in question is to be suspended pending the final determination of the appeal¹³.

The Secretary of State may¹⁴ give such directions as he considers appropriate to give effect to his determination¹⁵.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 For the meaning of 'safety certificate' see PARA 232 note 6 ante. As to applications for safety certificates see PARA 237 ante.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 27(1)(a)(i). For the purposes of reg 27(1)(a), a failure by the Office of Rail Regulation to make a decision on whether or not to issue or amend a safety certificate or safety authorisation within the four month period for making a decision calculated in accordance with reg 17(7) is to be treated as a refusal of the application: reg 27(7). For the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to applications for safety authorisations see PARA 240 ante.

4 As to applications for an amended safety certificate see PARA 239 ante.

5 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 27(1)(a)(ii). See note 3 supra. As to applications for an amended safety authorisation see PARA 242 ante.

6 Ibid reg 27(1)(b). As to directions to apply for an amended safety certificate or safety authorisation see PARA 244 ante.

7 Ibid reg 27(1)(c)(i). For the meaning of 'Part A of a safety certificate' see PARA 237 note 8 ante; and for the meaning of 'Part B of a safety certificate' see PARA 237 note 13 ante. As to the revocation of safety certificates see PARA 245 ante.

8 Ibid reg 27(1)(c)(ii). As to the revocation of safety authorisations see PARA 246 ante.

9 Ibid reg 27(1). The Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 351) apply to an appeal under the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 27(1) as they apply to an appeal under the Health and Safety at Work etc Act 1974 s 44(1) (as amended) (appeals in connection with licensing provisions: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 351), but with the modification that references to a licensing authority are to be read as references to the Office of Rail Regulation: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 27(8).

For the purposes of reg 27(1), the Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under reg 27(1) is to be determined on his behalf by a person appointed by him for that purpose: reg 27(2). The Tribunals and Inquiries Act 1992 must apply to a hearing held by a person appointed in pursuance of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 27(2) to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in the Tribunals and Inquiries Act 1992 s 10(1) (statement of reasons for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 27(4). The Secretary of State may pay to any person appointed to hear or determine an appeal under reg 27(2) on his behalf such remuneration and allowances as the Secretary of State may with the approval of the Minister for the Civil Service determine: reg 27(6). As to the Secretary of State see PARA 35 ante. As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 395, 427.

10 Ibid reg 27(3).

11 Ibid reg 27(3)(a).

12 Ibid reg 27(3)(b).

13 Ibid reg 27(9).

14 Ie if he determines such an appeal; otherwise the person who determines an appeal under ibid reg 27 on behalf of the Secretary of State if a person is so directed (as to which see note 9 supra): see reg 27(5).

15 Ibid reg 27(5).

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(c) General Duties

249. Risk assessment.

A transport operator¹ must:

- 934 (1) make a suitable and sufficient assessment of the risks to the safety of any persons for the purpose of identifying the measures he needs to take to ensure safe operation of the transport system² in question in so far as this is affected by his operation³; and
- 935 (2) implement the measures referred to in head (1) above⁴.

Any such assessment must be reviewed by the transport operator who made it if:

- 936 (a) there is a reason to suspect that it is no longer valid⁵; or
- 937 (b) there has been a significant change in the matters to which it relates⁶,

and where, as a result of any such review, changes to an assessment are required, the transport operator concerned must make them, and implement any changes to the measures previously identified⁷ as a result of the review⁸.

When carrying out such an assessment⁹ or such a review¹⁰, a transport operator must apply the common safety methods (CSMs)¹¹ to the extent that the operation is carried out on the mainline railway¹².

The transport operator must record in relation to any such assessment or review¹³:

- 938 (i) the assessment process undertaken, the methods of any calculation used and any assumptions made¹⁴; and
- 939 (ii) the significant findings of the risk assessment including the measures in place and any further measures the transport operator intends to take to ensure safe operation of the transport system in relation to his operation¹⁵.

Every transport operator must make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the extent of the undertaking¹⁶, for the effective planning, organisation, control, monitoring and review of the measures identified pursuant to these provisions¹⁷ and must record such arrangements¹⁸.

1 For the meaning of 'transport operator' see PARA 232 note 4 ante.

2 For the meaning of 'transport system' see PARA 231 ante.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 19(1)(a).

4 Ibid reg 19(1)(b).

5 Ibid reg 19(3)(a).

6 Ibid reg 19(3)(b). The Queen's Printers copy of reg 19(3) includes the words 'and where as a result of any such review changes to an assessment are required' (see the text and note 7 *infra*) as part of reg 19(3)(b) but it is submitted that reg 19(3)(b) ends as indicated in the text: see reg 19(3).

7 Ie pursuant to *ibid* reg 19(1) (see the text and notes 1-4 *supra*): see reg 19(3).

8 Ibid reg 19(3).

9 Ie pursuant to *ibid* reg 19(1) (see the text and notes 1-4 *supra*): see reg 19(2).

10 Ie pursuant to *ibid* reg 19(3) (see the text and notes 5-8 *supra*): see reg 19(2).

11 For the meaning of 'common safety methods' (CSMs) see *PARA* 232 note 13 *ante*.

12 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 19(2). For the meaning of 'mainline railway' see *PARA* 231 note 18 *ante*.

13 See notes 9-10 *supra*.

14 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 19(4)(a).

15 Ibid reg 19(4)(b).

16 For the meaning of 'transport undertaking' see *PARA* 232 note 4 *ante*.

17 See notes 9-10 *supra*.

18 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 19(5).

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250. Annual safety reports.

Any transport operator¹ who is subject to the prohibitions regarding: (1) the operation of a train² on the mainline railway³ without a current safety certificate⁴ in relation to the operation in question⁵; (2) the use of infrastructure⁶ to operate a train without a current safety authorisation⁷ in relation to the infrastructure in question⁸; (3) the operation of a vehicle⁹ on a transport system¹⁰ other than the mainline railway without a current safety certificate in relation to the operation in question¹¹; or (4) the use of infrastructure to operate a vehicle without a current safety authorisation in relation to the infrastructure in question¹², must send to the Office of Rail Regulation¹³ an annual safety report relating to the previous calendar year¹⁴. Such a report must contain:

- 940 (a) information on how the transport operator's safety targets¹⁵ are met¹⁶;
- 941 (b) the results achieved through putting the transport operator's safety plans¹⁷ into effect¹⁸;
- 942 (c) statistics for the common safety indicators¹⁹ in so far as they are relevant to the operation in question²⁰;
- 943 (d) the findings of safety auditing carried out pursuant to the procedures which derive from the requirement for recurrent internal auditing of the safety management system²¹; and
- 944 (e) comments on any deficiencies or malfunctions relating to the running of vehicles or the management of infrastructure relating to the operation in question that may be relevant to the safety of that transport system²².

Where an operation is carried out in part on the mainline railway and in part on another transport system, the report must clearly indicate the information that relates to the part carried out on the mainline railway²³.

The Office of Rail Regulation must publish and send to the European Railway Agency²⁴ an annual report relating to the previous calendar year²⁵ which must contain information on the following in relation to the mainline railway²⁶:

- 945 (i) the development of railway safety including an aggregation of all the statistics reported to the Office of Rail Regulation for the relevant calendar year pursuant to head (c) above which relate to an operation or part of an operation which is carried out on the mainline railway²⁷;
- 946 (ii) any important changes in relation to the regulation of railway safety²⁸;
- 947 (iii) the development of the system for safety certification and authorisation²⁹; and
- 948 (iv) the results of and experience relating to the supervision of transport operators³⁰,

in Great Britain³¹.

Where the Office of Rail Regulation discovers, after sending an annual report, that there were errors or omissions in it, the Office must send a corrected report for that year to the European

Railway Agency at the first convenient opportunity and, in any event, by no later than the time the next annual report is due to be sent³².

- 1 For the meaning of 'transport operator' see PARA 232 note 4 ante.
- 2 As to the meaning of 'train' see PARA 232 note 1 ante.
- 3 For the meaning of 'mainline railway' see PARA 231 note 18 ante.
- 4 For the meaning of 'safety certificate' see PARA 232 note 6 ante.
- 5 Ie the prohibition in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 3(1)(b) (see PARA 232 ante): see reg 20(1).
- 6 For the meaning of 'infrastructure' see PARA 231 ante.
- 7 For the meaning of 'safety authorisation' see PARA 232 note 10 ante.
- 8 Ie the prohibition in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 3(2)(b) (see PARA 232 ante): see reg 20(1).
- 9 As to the meaning of 'vehicle' see PARA 231 note 2 ante.
- 10 For the meaning of 'transport system' see PARA 231 ante.
- 11 Ie the prohibition in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 4(1)(b) (see PARA 233 ante): see reg 20(1).
- 12 Ie the prohibition in ibid reg 4(2)(b) (see PARA 233 ante): see reg 20(1).
- 13 As to the Office of Rail Regulation see PARA 49 et seq ante.
- 14 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 20(1). The first annual report required under reg 20(1) had to be sent by 30 June 2007 and subsequent reports must be sent by 30 June in each subsequent calendar year: reg 20(2). Any report sent to the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(1). As to the meaning of 'writing' see PARA 236 note 5 ante.
- 15 Ie as referred to in ibid regs 5(1)(c), 6(1)(b), Sch 1 para 2(b) (as to which see PARA 235 ante): see reg 20(1)(a).
- 16 Ibid reg 20(1)(a).
- 17 See note 15 supra.
- 18 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 20(1)(b).
- 19 Ie as listed in ibid reg 20(1)(c), Sch 3: reg 20(1)(c). The common safety indicators listed in Sch 3 are grouped into the following categories: (1) indicators relating to accidents (see Sch 3 para 1); (2) indicators relating to incidents and near-misses (see Sch 3 para 2); (3) indicators relating to consequences of accidents (see Sch 3 para 3); (4) indicators relating to technical safety of infrastructure and its implementation (see Sch 3 para 4); and (5) indicators relating to the management of safety (see Sch 3 para 5). The contents of Sch 3 substantially reproduce the provisions of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive': see PARA 30 ante) (OJ L164, 30.04.2004, p 44) Annex I: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Sch 3 (note).
- 20 Ibid reg 20(1)(c). However, the provision set out in head (c) in the text, to the extent that the operation in question is carried out on a transport system other than the mainline railway, requires no statistics in relation to the miscellaneous categories of: (1) any other types of accident (ie Sch 3 para 1(1)(a)(vii)); or (2) any other types of person seriously injured or killed (ie Sch 3 para 1(1)(b)(v)), which appear under the general heading of indicators relating to accidents (ie Sch 3 para 1: see note 19 supra): see reg 20(1)(c).
- 21 Ibid reg 20(1)(d). The text refers to safety auditing carried out pursuant to the procedures referred to in Sch 1 para 2(k) (as to which see PARA 235 ante): see reg 20(1)(d).
- 22 Ibid reg 20(1)(e).

23 Ibid reg 20(1).

24 For the meaning of 'European Railway Agency' see PARA 247 note 2 ante.

25 The first annual report required under the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 20(3) had to be sent to the European Railway Agency by 30 September 2007 and subsequent reports must be sent by 30 September in each subsequent calendar year: reg 20(4). Any report issued by the Office of Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 must be in writing and in English: reg 21(2). As to the meaning of 'writing' see PARA 236 note 5 ante.

26 Ibid reg 20(3).

27 Ibid reg 20(3)(a).

28 Ibid reg 20(3)(b).

29 Ibid reg 20(3)(c).

30 Ibid reg 20(3)(d).

31 Ibid reg 20(3). For the meaning of 'Great Britain' see PARA 29 note 3 ante.

32 Ibid reg 20(5).

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251. Retention etc of documents.

A transport operator¹ must keep at the notified address² in relation to the operation in question³:

- 949 (1) the safety certificate or safety authorisation issued in response to his application for such certificate or authorisation⁴ and the documentation referenced in that safety certificate or safety authorisation⁵;
- 950 (2) any notice of amendment issued⁶ in relation to his safety certificate or safety authorisation⁷;
- 951 (3) any records he is required to make for the purposes of risk assessment⁸;
- 952 (4) any annual safety report sent to the Office of Rail Regulation⁹;
- 953 (5) any notification of changes or of a revision notified to the Office of Rail Regulation¹⁰; and
- 954 (6) a record of any findings of internal safety auditing¹¹ and of any action taken in consequence of such auditing¹²,

or a hard or electronic copy of such documents¹³. The documents referred to in heads (1) to (6) above must be kept as long as they:

- 955 (a) are or are a copy of the current safety certificate or safety authorisation or a notice of amendment thereof¹⁴;
- 956 (b) are or are a copy of a notification of a major change or a revision which is relevant to the current operation of the transport undertaking¹⁵;
- 957 (c) relate to the information on the basis of which the Office of Rail Regulation's acceptance¹⁶ was made in relation to a current safety certificate or safety authorisation¹⁷; or
- 958 (d) relate to a risk assessment, as reviewed from time to time¹⁸.

The documents kept pursuant to heads (1), (2), (3) and (5) above must¹⁹ be made available for public inspection at the notified address at reasonable times and on reasonable notice²⁰. The documents kept pursuant to head (4) or head (6) above must be kept for five years²¹.

1 For the meaning of 'transport operator' see PARA 232 note 4 ante.

2 I.e. the address in Great Britain notified to the Office of Rail Regulation by an applicant who makes an application in respect of a safety certificate or safety authorisation: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 21(3) (cited in PARAS 237, 238, 240, 241 ante). A person who has a notified address may subsequently notify the Office of Rail Regulation of a different address in Great Britain and in this case references in reg 21 to the notified address must be construed as a reference to the last address notified under reg 21(8): reg 21(8). For the meaning of 'Great Britain' see PARA 29 note 3 ante; for the meaning of 'safety certificate' see PARA 232 note 6 ante; and for the meaning of 'safety authorisation' see PARA 232 note 10 ante. As to the Office of Rail Regulation see PARA 49 et seq ante.

3 Ibid reg 21(4).

- 4 As to applications for safety certificates see PARA 237 ante; and as to applications for safety authorisations see PARA 240 ante.
- 5 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 21(4)(a).
- 6 le issued pursuant to ibid Pt 2 (regs 3-18) (see PARA 232 et seq ante) or any revision made pursuant to reg 29(7), Sch 5 para 8 (transitional provisions): see reg 21(4)(b).
- 7 Ibid reg 21(4)(b).
- 8 Ibid reg 21(4)(c). The text refers to records which are required to be made pursuant to reg 19(4), (5) (see PARA 249 ante): see reg 21(4)(c).
- 9 Ibid reg 21(4)(d). The text refers to any annual safety report sent under reg 20(1) (see PARA 250 ante): see reg 21(4)(d).
- 10 Ibid reg 21(4)(e). The text refers to notifications which are required to be made under reg 13 (notice of changes by holder of a safety certificate or a safety authorisation: see PARA 243 ante) or Sch 5 para 9 (transitional provisions): see reg 21(4)(e).
- 11 le carried out pursuant to the procedures referred to in ibid regs 5(1)(c), 6(1)(b), Sch 1 para 2(k) (as to which see PARA 235 ante): see reg 21(4)(f).
- 12 Ibid reg 21(4)(f).
- 13 Ibid reg 21(4).
- 14 Ibid reg 21(5)(a).
- 15 Ibid reg 21(5)(b). For the meaning of 'transport undertaking' see PARA 232 note 4 ante.
- 16 le referred to in ibid reg 7(4) (granting of safety certificates: see PARA 238 ante) or reg 10(3) (granting of safety authorisations: see PARA 241 ante), as the case may be: see reg 21(5)(c).
- 17 Ibid reg 21(5)(c).
- 18 Ibid reg 21(5)(d). The text refers to the risk assessment, as reviewed from time to time, carried out pursuant to reg 19 (see PARA 249 ante): see reg 22(5)(d).
- 19 le subject to the proviso that nothing in ibid reg 21(6) requires the disclosure of any information relating to a named individual, or which is commercially confidential or which is detrimental to national security or to the security of the transport system in question: reg 21(7). For the meaning of 'transport system' see PARA 231 ante.
- 20 Ibid reg 21(6). The Queen's Printers copy of reg 21(6) refers to documents kept pursuant to reg 21(4)(d) (head (4) in the text) twice, ie as being subject to being kept for five years as well as being made available for public inspection: see reg 21(6). However, it is submitted that the second of the references to reg 21(4)(d) in reg 21(6) is actually to reg 21(4)(c) (head (3) in the text); the text reflects this.
- 21 Ibid reg 21(6). See note 20 supra.

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252. Co-operation required to enable compliance with the railway safety provisions.

Any transport operator¹ whose operations may affect or may be affected by operations carried out by the duty holder², and any employer of persons (or a self-employed person) carrying out work on or in relation to premises or plant owned or controlled by the duty holder³, must co-operate as far as is necessary with a transport operator to enable him to comply with the provisions of the railway safety provisions⁴.

Every transport operator must co-operate, in so far as is reasonable, with any other transport operator who operates on the same transport system⁵ where that other transport operator is taking action to achieve the safe operation of that transport system⁶.

1 For the meaning of 'transport operator' see PARA 232 note 4 ante.

2 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 22(2)(a). For these purposes, 'duty holder' means a transport operator referred to in reg 22(1) (see the text and note 4 infra): reg 22(4).

3 Ibid reg 22(2)(b).

4 Ibid reg 22(1). The text refers to compliance with the provisions of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as to which see PARA 232 et seq ante): see reg 22(1).

5 For the meaning of 'transport system' see PARA 231 ante.

6 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 22(3).

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(d) Safety Critical Work

253. Meaning of 'safety critical work'.

'Safety critical work' means¹ any safety critical task carried out by any person in the course of their work or voluntary work on or in relation to a transport system². For these purposes, 'safety critical task' means:

- 959 (1) in relation to a vehicle³ used on a transport system: (a) driving, dispatching or any other activity which is capable of controlling or affecting the movement of that vehicle; (b) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle; (c) coupling or uncoupling; (d) installation of components⁴, other than where the installation of those components is subject to supervision and checking by a safety critical worker or a controller of safety critical work⁵; (e) maintenance⁶, other than where the carrying out of that maintenance is subject to supervision and checking by a safety critical worker or a controller of safety critical work; or (f) checking that that vehicle is working properly and, where carrying goods, is correctly loaded before being used;
- 960 (2) in relation to a transport system: (a) installation or maintenance of any part of it or of the telecommunications system⁷ relating to it or used in connection with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system other than where the carrying out of that task is subject to supervision and checking by a safety critical worker or a controller of safety critical work; (b) controlling the supply of electricity directly to it or to any vehicles used on it; (c) receiving and relaying of communications; or (d) any person ensuring the safety of any persons working on or near to the track, whether or not the persons working on or near to the track are carrying out safety critical work;
- 961 (3) in relation to training, any practical training or the supervision of any such training in any of the tasks set out in head (1) and head (2) above,

which could significantly affect the health or safety of persons on a transport system⁸.

¹ le for the purposes of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Pt 4 (regs 23-26) (see also PARA 254 et seq post). However, Pt 4 does not apply to or in relation to: (1) the police, ambulance or fire service when they are carrying out their emergency functions on or in relation to a transport system; and (2) any voluntary worker for a period of 12 months from 1 October 2006: reg 23(4). For the meaning of 'transport system' see PARA 231 ante.

² Ibid reg 23(1). Related expressions are to be construed accordingly: see reg 23(1).

³ As to the meaning of 'vehicle' see PARA 231 note 2 ante.

⁴ For these purposes, 'installation' includes the installation, examination or testing of components: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 23(1).

5 For these purposes, 'controller of safety critical work' means any person controlling the carrying out of safety critical work on a transport system or in relation to a vehicle used on a transport system: *ibid* reg 23(1). Any reference in Pt 4 to a person controlling the carrying out of safety critical work is a reference to a person managing, supervising or controlling that work in connection with the carrying on by him of a trade, business or other undertaking, whether or not for profit: reg 23(3). Any reference in Pt 4 to a safety critical worker or a controller of safety critical work supervising and checking the work of another person is to a safety critical worker or a controller of safety critical work who has been assessed as competent in the tasks to which that supervision and checking relates: reg 23(2).

6 For these purposes, 'maintenance' includes repair work, reconditioning, examination, testing or alteration: *ibid* reg 23(1).

7 For these purposes, 'telecommunications system' means any telecommunications system provided by a transport operator or its associated equipment, which is capable of controlling or affecting the movement of a vehicle, or which is provided by a transport operator for purposes which include calling the emergency services: *ibid* reg 23(1). For the meaning of 'transport operator' see PARA 232 note 4 *ante*.

8 *Ibid* reg 23(1).

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254. Assessments for competence and fitness.

Every controller of safety critical work¹ must, so far as is reasonably practicable, ensure that a person under his management, supervision or control, with the exception of where that person is receiving practical training in a safety critical task², only carries out safety critical work where³:

- 962 (1) that person has been assessed as being competent and fit to carry out that work following an assessment by an assessor⁴;
- 963 (2) there is an accurate and up to date record in writing of that person's competence and fitness which references any criteria for determining competence and fitness against which that assessment of competence was made⁵;
- 964 (3) the record, or an accurate summary of the record referred to in head (2) above is available for inspection, on reasonable request, by any other controller of safety critical work or any operator⁶ who may be affected by any safety critical work carried out or to be carried out by that person, for the purposes of establishing that person's competence and fitness to carry out safety critical work⁷; and
- 965 (4) there are in place arrangements for monitoring the competence and fitness of that person⁸.

Every controller of safety critical work must, without unreasonable delay, review any person's competence or fitness assessment where⁹:

- 966 (a) they have reason to doubt the competence or fitness of a person to carry out that safety critical work¹⁰; or
- 967 (b) there has been a significant change in the matters to which the assessment relates¹¹;

and where, as a result of any such review, a reassessment of competence or fitness is required, that reassessment of competence or fitness must be carried out to ensure that the requirements as to competence or fitness¹² are met¹³. Where such a reassessment of competence or fitness is required, the controller of safety critical work must, so far as is reasonably practicable ensure that, as a result, the health and safety of persons on a transport system is not prejudiced¹⁴.

1 For the meaning of 'safety critical work' see PARA 253 ante; and for the meaning of 'controller of safety critical work' see PARA 253 note 5 ante. As to the application of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Pt 4 (regs 23-26) see PARA 253 note 1 ante.

2 For the meaning of 'safety critical task' see PARA 253 ante.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 24(1).

4 Ibid reg 24(1)(a). For the purposes of Pt 4, 'assessor' means any person who is competent to make an impartial and objective assessment of another person's competence or fitness to carry out safety critical work,

and related expressions must be construed accordingly: reg 23(1). For these purposes, 'fitness' means physical and mental fitness, and related expressions must be construed accordingly: reg 23(1).

5 Ibid reg 24(1)(b).

6 For the purposes of ibid Pt 4, 'operator' means any person carrying on an undertaking which includes a transport system or any part of it or the provision of transport services on such a system: reg 23(1). For the meaning of 'transport system' see PARA 231 ante.

7 Ibid reg 24(1)(c).

8 Ibid reg 24(1)(d).

9 Ibid reg 24(2).

10 Ibid reg 24(2)(a). See *Jenkins v Heathrow Express Operating Co Ltd* [2007] All ER (D) 144 (Feb), EAT (employer acted rationally with regard to staff member's fitness to return to work which included a safety critical function).

11 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 24(2)(b).

12 Ie the requirements of ibid reg 24(1) (see the text and notes 1-8 supra): see reg 24(2).

13 Ibid reg 24(2).

14 Ibid reg 24(3).

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255. Arrangements to protect against effects of fatigue.

Every controller of safety critical work¹ must have in place arrangements to ensure, so far as is reasonably practicable, that a safety critical worker under his management, supervision or control does not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to become so fatigued that his health or safety or the health or safety of other persons on a transport system² could be significantly affected³. Those arrangements⁴ must be reviewed by the controller of safety critical work where he has reason to doubt the effectiveness of those arrangements⁵.

1 For the meaning of 'safety critical work' see PARA 253 ante; and for the meaning of 'controller of safety critical work' see PARA 253 note 5 ante. As to the application of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Pt 4 (regs 23-26) see PARA 253 note 1 ante.

2 For the meaning of 'transport system' see PARA 231 ante.

3 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 25(1).

4 Ie the arrangements in ibid reg 25(1) (see the text and notes 1-3 supra): see reg 25(2).

5 Ibid reg 25(2).

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256. Co-operation required to enable compliance in relation to safety critical work.

Every controller of safety critical work¹ must co-operate as far as is necessary with any other controller of safety critical work or any operator to enable that other controller of safety critical work to comply with the provisions relating to safety critical work on the railways².

Every person carrying out safety critical work must, as regards any requirement so imposed³ on any controller of safety critical work, co-operate with that controller of safety critical work so far as is necessary to enable that requirement to be performed or complied with⁴.

1 Ie to whom the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Pt 4 (regs 23-26) applies (as to which see PARA 253 note 1 ante): see reg 26(1). For the meaning of 'safety critical work' see PARA 253 ante; and for the meaning of 'controller of safety critical work' see PARA 253 note 5 ante.

2 Ibid reg 26(1). The text refers to the provisions of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Pt 4 (as to which see PARA 253 et seq ante): see reg 26(1).

3 Ie under ibid Pt 4 (as to which see PARA 253 et seq ante): see reg 26(2).

4 Ibid reg 26(2).

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(e) Exemptions

257. Power to grant exemptions from requirements or prohibitions.

The Office of Rail Regulation¹ may² exempt any person or class of persons or any transport system³ or part of a transport system from any requirement or prohibition imposed by the railway safety provisions⁴. However, the Office of Rail Regulation is not to grant any such exemption unless, having regard to the circumstances of the case, and in particular to:

- 968 (1) the conditions, if any, which it proposes to attach to the exemption⁵; and
- 969 (2) any other requirements imposed by or under any enactment which applies to the case⁶,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it⁷.

The Secretary of State for Defence⁸ may, in the interests of national security, by a certificate in writing exempt any person or class of persons from any requirement or prohibition imposed by the railway safety provisions⁹.

Any exemption so granted¹⁰ may be granted subject to conditions and to a limit of time¹¹. An exemption granted by the Office of Rail Regulation¹² may be revoked by the Office of Rail Regulation¹³, and an exemption granted by the Secretary of State for Defence¹⁴ may be revoked by the Secretary of State for Defence¹⁵, at any time by a further certificate in writing¹⁶.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 Ie subject to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 30(2), (3) (as to which see the text and notes 4-7 infra): see reg 30(1).

3 For the meaning of 'transport system' see PARA 231 ante.

4 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 30(1). Any exemption under reg 30(1) is to be made by certificate and in writing: see reg 30(1). As to the meaning of 'writing' see PARA 236 note 5 ante. The text refers to exemption from any requirement or prohibition imposed by the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599: see reg 30(1). However, the Office of Rail Regulation is not to grant any such exemption in relation to any requirement or prohibition imposed by Pt 2 (regs 3-18) (safety management, certification and authorisation) (also see PARA 232 et seq ante) or Pt 3 (regs 19-22) (general duties) (see PARAS 249-252 ante) in relation to an operation carried out on the mainline railway other than an exemption to an operator of last resort from the requirement to copy to an affected party or to notify an affected party of (as the case may be) the documents referred to in reg 17(3) (a)(i) (ie applications for a safety certificate or safety authorisation, an amended safety certificate or safety authorisation) and reg 17(3)(a)(ii) (ie further information sent to the Office of Rail Regulation pursuant to reg 17(5)): reg 30(2). For the meaning of 'mainline railway' see PARA 231 note 18 ante; and for the meaning of 'operator of last resort' see PARA 238 note 7 ante.

5 Ibid reg 30(3)(a).

6 Ibid reg 30(3)(b).

7 Ibid reg 30(3).

- 8 As to the Secretary of State for Defence see ARMED FORCES vol 2(2) (Reissue) PARA 2.
- 9 Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 30(4).
- 10 le granted pursuant to ibid reg 30(1), (2) (as to which see the text and notes 1-4 supra) or reg 30(4) (as to which see the text and notes 8-9 supra): see reg 30(5).
- 11 Ibid reg 30(5).
- 12 le granted pursuant to ibid reg 30(1), (2) (as to which see the text and notes 1-4 supra): see reg 30(6)(a).
- 13 Ibid reg 30(6)(a).
- 14 le granted pursuant to ibid reg 30(4) (as to which see the text and notes 8-9 supra): see reg 30(6)(b).
- 15 Ibid reg 30(6)(b).
- 16 Ibid reg 30(6).

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(f) Access to Training Services

258. Access to training services for the purposes of meeting railway safety requirements.

A railway undertaking¹ applying for a safety certificate² is entitled to fair and non-discriminatory access to training services³ for train drivers and staff accompanying the trains, whenever such training is necessary for the fulfilment of requirements to obtain that safety certificate⁴. The services so offered must include training on:

- 970 (1) necessary route knowledge⁵;
- 971 (2) operating rules and procedures⁶;
- 972 (3) the signalling and control command system⁷; and
- 973 (4) emergency procedures⁸,

in respect of the routes operated⁹.

An infrastructure manager¹⁰ is, and those of his staff performing safety critical tasks¹¹ are, entitled to fair and non-discriminatory access to training services¹².

If the training services to which access is so granted¹³ are available only through the services of one single railway undertaking or infrastructure manager, that railway undertaking or infrastructure manager must make those services available to other railway undertakings or, as the case may be, infrastructure managers, at a reasonable and non-discriminatory price, which is cost-related and may include a profit margin¹⁴.

For the purpose of ensuring that training, qualifications and experience acquired by a member of staff of a railway undertaking can be taken into account by another railway undertaking to whom application for employment as a train driver, on-board staff or staff performing safety critical tasks is made by that staff member, that staff member must be granted access to all documents attesting to his relevant training, qualifications and experience, and is entitled to have copies of such documentation¹⁵.

1 For these purposes, 'railway undertaking' means railway undertaking as defined in Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) art 2(k) (see PARA 109 note 1 ante) and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction (which also includes undertakings which provide traction only): Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (the 'Railway Safety Directive') (OJ L164, 30.04.2004, p 44) art 3(c); definition applied by the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 2(1).

2 In accordance with the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 Pt 2 (regs 3-18) (safety management, certification and authorisation) (also see PARA 232 et seq ante): see the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 4(1). For the meaning of 'safety certificate' see PARA 232 note 6 ante; definition applied by reg 2(1).

3 For the purposes of *ibid* reg 4, the entitlement to access to training services includes the right of access to such facilities as form a part of those training services, including where such facilities do not form part of a railway system: reg 4(6). 'Railway system' means the totality of the subsystems for structural and operational areas, as defined in Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L235, 17.09.1996, p 6) art 2(c) and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L110, 20.4.2001, p 1) art 2(c), as well as the management and operation of the system as a whole: Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) art 3(a); definition applied by the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 2(1). Accordingly, the subsystems referred to are the result of the division of the appropriate rail system as shown in Council Directive 96/48/EC (OJ L235, 17.09.1996, p 6) Annex II (as substituted) (Subsystems of the Trans-European High-Speed Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2), Sch 3; and *PARA* 210 note 5 *ante*) and Directive 2001/16/EC (OJ L110, 20.04.2001, p 1) Annex II (Subsystems of the Trans-European Conventional Rail System: see the Railways (Interoperability) Regulations 2006, SI 2006/397, reg 2(2), Sch 4; and *PARA* 210 note 5 *ante*).

The Railways (Access to Training Services) Regulations 2006, SI 2006/598 do not apply to training services provided: (1) in relation to: (a) metros, trams and other light rail systems (see reg 3(1)(a), (2)(a)); (b) networks that are functionally separate from the rest of the railway system and intended only for the operation of local, urban or suburban passenger services (see reg 3(1)(a), (2)(b)); or (c) privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations (see reg 3(1)(a), (2)(c)); or (2) by the operators of the systems described in heads (a) to (c) *supra* (see reg 3(1)(b)). Nor do the Railways (Access to Training Services) Regulations 2006, SI 2006/598 apply to the tunnel system as defined in the Channel Tunnel Act 1987 s 1(7) (see *PARA* 109 note 1 *ante*): Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 1(2).

4 Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 4(1).

5 *Ibid* reg 4(2)(a).

6 *Ibid* reg 4(2)(b).

7 *Ibid* reg 4(2)(c).

8 *Ibid* reg 4(2)(d).

9 *Ibid* reg 4(2).

10 For these purposes, 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L237, 24.08.1991, p 25) art 3, which may also include the management of infrastructure control and safety systems; and where the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings: Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) art 3(b); definition applied by the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 2(1). Accordingly, 'railway infrastructure' means all the items listed in Regulation (EEC) 2598/70 of the Commission of 18 December 1970 (OJ L278, 23.12.1970, p 1 (S Edn 1970(III) p 899)) Annex I.A (repealed), with the exception of the final indent which, for these purposes only, must read 'Buildings used by the infrastructure department': Council Directive 91/440/EEC (OJ L237, 24.08.1991, p 25) art 3; definition applied by Directive 2004/49/EC (OJ L164, 30.04.2004, p 44) art 3(b) and the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 2(1). Regulation (EEC) 2598/70 (OJ L278, 23.12.1970, p 1 (S Edn 1970(III) p 899)) has been repealed by Commission Regulation (EC) 851/2006 of 9 June 2006 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) 1108/70 (OJ L158, 10.06.2006, p 3) (see *PARA* 28 *ante*).

11 For the meaning of 'safety critical task' see *PARA* 253 *ante*; definition applied by the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 2(1).

12 *Ibid* reg 4(3).

13 *Ie* under *ibid* reg 4: see reg 4(4).

14 *Ibid* reg 4(4).

15 *Ibid* reg 4(5).

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259. Appeal to the Office of Rail Regulation regarding denial of access to training services.

Any railway undertaking¹, infrastructure manager², staff of an infrastructure manager performing safety critical tasks³ or employee of any railway undertaking⁴, who is denied the entitlements associated with proper access to training services⁵ has a right of appeal to the Office of Rail Regulation⁶.

Such an appeal⁷ must be lodged by way of an application in such form and manner as the Office of Rail Regulation may from time to time prescribe⁸.

The Office of Rail Regulation must, within two months of the date of receipt of all relevant information in relation to an appeal⁹: (1) make a decision on¹⁰; and (2) where appropriate, issue a direction to the person against whose decision or action the appeal is brought to remedy the situation arising out of¹¹, an appeal so brought¹².

Without prejudice to the right of any person to make an application to the court for judicial review¹³: (a) a decision by the Office of Rail Regulation on an appeal so brought¹⁴ is binding on all parties affected by that decision¹⁵; and (b) it is the duty of any person to whom a direction is so given¹⁶ to comply with and give effect to that direction¹⁷.

1 Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 5(1)(a). For the meaning of 'railway undertaking' see PARA 258 note 1 ante.

2 Ibid reg 5(1)(b). For the meaning of 'infrastructure manager' see PARA 258 note 10 ante.

3 Ibid reg 5(1)(c). For the meaning of 'safety critical task' see PARA 253 ante; definition applied by reg 2(1).

4 Ibid reg 5(1)(d).

5 I.e. the entitlements conferred on it or him by, as the case may be, ibid reg 4(1)-(3), (5) (as to which see PARA 258 ante); see reg 5(1). As to the training services to which reg 4(4) applies (as to which see PARA 258 ante) see note 6 infra.

6 Ibid reg 5(1). In relation to training services to which reg 4(4) applies (as to which see PARA 258 ante) a railway undertaking or infrastructure manager who considers that the price charged for access to those services is unreasonable or discriminatory has a right of appeal to the Office of Rail Regulation: reg 5(2). As to the Office of Rail Regulation see PARA 49 et seq ante.

7 I.e. under either ibid reg 5(1) or reg 5(2) (as to which see the text and notes 1-6 supra); see reg 5(3).

8 Ibid reg 5(3). The Office of Rail Regulation must make the prescription and details of such manner and form referred to in the text publicly available: reg 5(3).

9 I.e. an appeal to which ibid reg 5 applies: see reg 5(4).

10 Ibid reg 5(4)(a).

11 Ibid reg 5(4)(b).

12 Ibid reg 5(4). The text refers to an appeal brought under reg 5: see reg 5(4).

13 le under CPR Pt 54: see the Railways (Access to Training Services) Regulations 2006, SI 2006/598, reg 5(5). As to the procedure for judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 659 et seq.

14 le an appeal brought under ibid reg 5: see reg 5(5)(a).

15 Ibid reg 5(5)(a).

16 le given under ibid reg 5: see reg 5(5)(b).

17 Ibid reg 5(5)(b).

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(g) Safety of Cableway Installations

260. Standards for the construction and putting into service of cableway installations.

The statutory provisions whose purpose is to introduce common standards for the construction and putting into service of cableway installations¹:

- 974 (1) prohibit works for the construction or modification of a cableway installation without proper authorisation²;
- 975 (2) prohibit a cableway installation being put into service without proper authorisation³;
- 976 (3) require operators of cableway installations to compile and maintain log books, and to comply with specified measures and conditions⁴;
- 977 (4) prohibit the placing on the market of a safety component unless it meets the essential requirements⁵;
- 978 (5) prohibit the placing on the market of a subsystem unless it meets the essential requirements⁶;
- 979 (6) provide for the assessment procedures for safety components and subsystems⁷;
- 980 (7) require others to comply with heads (4) and (5) above where the person responsible has not done so⁸;
- 981 (8) exempt safety components and subsystems from heads (4) and (5) above if they are to be used or exported outside of the Community⁹;
- 982 (9) set out the circumstances under which the safety components, subsystems and cableway installations are to be taken to meet the prescribed requirements¹⁰;
- 983 (10) set out the authorisation procedures and provide for notified bodies¹¹;
- 984 (11) provide for enforcement measures, including a defence of due diligence and allowing for liabilities to be placed on persons other than the principal offender¹²; and
- 985 (12) make supplementary provision¹³.

1. I.e. the Cableway Installations Regulations 2004, SI 2004/129 (as amended), which implement, in relation to the whole of the United Kingdom, Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons (OJ L106, 03.05.2000, p 21) (as to which see PARA 30 ante), and are similar in form to the railway safety provisions (as to which see PARA 231 et seq ante).

For these purposes, 'cableway installation' means an installation made up of several components which: (1) is used or intended to be used for the purpose of providing an operational system for carrying persons in vehicles, on chairs or by towing devices; (2) uses cables positioned along the line of travel to provide suspension or traction or both; and (3) is one of the following: (a) cable car (including a gondola and chair lift) where the cabins or chairs are lifted or displaced by one or more carrier cables; (b) drag lift, where users with appropriate equipment are dragged by means of a cable; or (c) funicular railway or other installation with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables: Cableway Installations Regulations 2004, SI 2004/129, reg 2(5).

The Cableway Installations Regulations 2004, SI 2004/129 (as amended) apply in relation to any cableway installation either put into service or modified after 3 May 2004 and to any subsystem or safety component

placed on the market after that date: see reg 3(1). The Regulations do not apply to: (i) lifts, within the meaning of the Lifts Regulations 1997, SI 1997/831 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 562) (Cableway Installations Regulations 2004, SI 2004/129, reg 3(2)(a)); (ii) cableway installations used wholly or mainly for agricultural purposes (reg 3(2)(b)); (iii) cableway installations (on-site or mobile) in fairgrounds or amusement parks which are designed for leisure purposes and not as a means for transporting persons (reg 3(2)(c)); (iv) mining installations or on-site cableway installations used wholly or mainly for industrial purposes (reg 3(2)(d)); (v) cable operated ferries (reg 3(2)(e)); (vi) rack railways (reg 3(2)(f)); (vii) cableway installations that are chain driven (reg 3(2)(g)); (viii) cable-operated tramways of a traditional construction (reg 3(2)(h)); (ix) subsystems and safety components for the installations referred to in heads (i) to (viii) supra (reg 3(2)(i)).

2 See *ibid* reg 4.

3 See *ibid* reg 5. For these purposes, 'putting into service' means, in respect of a cableway installation that has been constructed or modified under the Cableway Installations Regulations 2004, SI 2004/129 (as amended), first use of that installation for the carriage of passengers: reg 2(5).

4 See *ibid* reg 6. For these purposes, 'operator', in relation to a cableway installation, means the person who, for the time being has, or is intending to have the management of that installation: reg 2(5).

5 See *ibid* reg 7, Sch 9. For these purposes, 'essential requirements' means such of the essential requirements set out in reg 2(5), Sch 2 as are relevant to a cableway installation, safety component or subsystem, (as the case may be); 'placing on the market', in relation to a safety component or subsystem, occurs when a person first makes that safety component or subsystem available on the Community market with a view to its distribution or use in the Community; and 'safety component' means any component, set of components, sub-assembly or complete assembly of equipment and any device incorporated in a cableway installation for the purpose of ensuring a safety function and which has been identified as a safety component in the safety analysis, the failure of which would endanger the health or safety of any person: reg 2(5). 'Safety analysis' means an analysis of factors relating to the safety of a cableway installation which complies with the requirements set out in reg 2(5), Sch 3, and covers all safety aspects of that installation and its surroundings, taking into account the design, construction or modification and putting into service, and identifying risks to safety that could occur during operation of that installation: reg 2(5). 'Subsystem' means the subsystems of a cableway installation set out in reg 2(5), Sch 1: reg 2(5). The Cableway Installations Regulations 2004, SI 2004/129, Schs 1-9 (as amended) set out Directive 2000/9/EC (OJ L106, 03.05.2000, p 21) Annexes I-IX: see the Cableway Installations Regulations 2004, SI 2004/129, reg 2(4)(a).

Except for the references to the European Communities in reg 2(5) (definition of 'Commission') and in relation to the Official Journal, a reference to the European Community includes a reference to the EEA and a reference to a Member State includes a reference to an EEA State: reg 2(2). For these purposes, (1) 'EEA' means the European Economic Area (reg 2(3)(a)); (2) 'EEA State' means a state which is a contracting party to the EEA Agreement (reg 2(3)(b)); and (3) 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183) (Cableway Installations Regulations 2004, SI 2004/129, reg 2(3)(c)).

6 See *ibid* reg 8, Sch 7. See note 5 *supra*.

7 See *ibid* reg 9, Schs 5, 7. See note 5 *supra*.

8 See *ibid* reg 10.

9 See *ibid* reg 11.

10 See *ibid* reg 12.

11 See *ibid* Pt III (regs 13-22), Sch 8. See note 5 *supra*.

12 See *ibid* Pt IV (regs 23-30). The Regulations are enforced by the Health and Safety Executive: see reg 23.

13 See *ibid* Pt V (reg 32).

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(D) ACCESSIBILITY REQUIREMENTS FOR DISABLED PASSENGERS

261. Rail vehicle accessibility regulations.

The Secretary of State¹ may make rail vehicle² accessibility regulations³ for the purpose of securing that it is possible⁴:

- 986 (1) for disabled persons⁵ to get on to and off regulated rail vehicles⁶ in safety and without unreasonable difficulty⁷, and to be carried in such vehicles in safety and in reasonable comfort⁸; and
- 987 (2) for disabled persons in wheelchairs to get on to and off such vehicles in safety and without unreasonable difficulty while remaining in their wheelchairs⁹, and to be carried in such vehicles in safety and in reasonable comfort while remaining in their wheelchairs¹⁰.

Rail vehicle accessibility regulations may, in particular, make provision as to the construction, use and maintenance of regulated rail vehicles, including provision as to¹¹: (a) the fitting of equipment to vehicles¹²; (b) equipment to be carried by vehicles¹³; (c) the design of equipment to be fitted to, or carried by, vehicles¹⁴; (d) the use of equipment fitted to, or carried by, vehicles¹⁵; (e) the toilet facilities to be provided in vehicles¹⁶; (f) the location and floor area of the wheelchair accommodation¹⁷ to be provided in vehicles¹⁸; and (g) assistance to be given to disabled persons¹⁹. Different provision may be made in rail vehicle accessibility regulations²⁰: (i) as respects different classes or descriptions of rail vehicle²¹; (ii) as respects the same class or description of rail vehicle in different circumstances²²; and (iii) as respects different networks²³.

If a regulated rail vehicle which does not conform with any provision of the rail vehicle accessibility regulations with which it is required to conform is used for carriage²⁴, the operator²⁵ of the vehicle is guilty of an offence²⁶.

1 As to the Secretary of State see PARA 35 ante.

2 Until a day to be appointed under the Disability Discrimination Act 2005 s 20(3), 'rail vehicle' means a vehicle: (1) constructed or adapted to carry passengers on any railway, tramway or prescribed system; and (2) first brought into use, or belonging to a class of vehicle first brought into use, after 31 December 1998: Disability Discrimination Act 1995 ss 46(6), 68(1). However, as from a day to be appointed, this definition is substituted so as to refer to any rail vehicle constructed or adapted to carry passengers on any railway, tramway or prescribed system: s 46(6) (definition prospectively substituted by the Disability Discrimination Act 2005 s 6(2)). However, at the date at which this volume states the law no such day had been appointed. 'Prescribed system' means a system using a prescribed mode of guided transport ('guided transport' having the same meaning as in the Transport and Works Act 1992, as to which see PARA 302 note 7 post), where 'railway' and 'tramway' have the same meanings as in that Act (see PARA 302 note 4 post): Disability Discrimination Act 1995 s 46(7).

Until a day to be appointed under the Disability Discrimination Act 2005 s 20(3), the Secretary of State may by regulations make provision as to the time when a rail vehicle (or a class of rail vehicle) is to be treated, for these purposes, as first brought into use: Disability Discrimination Act 1995 s 46(8). Regulations under s 46(8) (prospectively repealed) may include provision for disregarding periods of testing and other prescribed periods of use: s 46(9). At the date at which this volume states the law, no such regulations had been made. The provisions of s 46(8)-(10) are repealed by the Disability Discrimination Act 2005 s 19(2), Sch 2 as from a day to be appointed under s 20(3). However, at the date at which this volume states the law, no such day had been appointed.

3 For these purposes, 'rail vehicle accessibility regulations' means regulations made under *ibid* s 46(1): s 68(1). Before making any regulations under s 46(1) or under s 47 (as amended) (see PARA 262 post) the Secretary of State must consult the Disabled Persons Transport Advisory Committee and such other representative organisations as he thinks fit: s 46(11). As to the Disabled Persons Transport Advisory Committee see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 259.

As to the regulations made under the Disability Discrimination Act 1995 s 46(1) see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456 (as amended). The Regulations apply to rail vehicles used on railways, tramways, monorail systems, magnetic levitation systems or systems which are track-based with side guidance: see reg 3(1) (amended by SI 2000/3215). Provisions relating to facilities for disabled persons are made regarding:

- 203 (1) doors (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 4 (amended by SI 2000/3215));
- 204 (2) door controls (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 5 (amended by SI 2000/3215));
- 205 (3) steps (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 6);
- 206 (4) floors (see reg 7);
- 207 (5) seats (see reg 8, Schedule (Schedule amended by SI 2000/3215));
- 208 (6) tramcar request-stop controls (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 9 (amended by SI 2000/3215));
- 209 (7) interior transparent surfaces (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 10);
- 210 (8) handrails and handholds (see reg 11);
- 211 (9) door handles (see reg 12);
- 212 (10) passenger information (see reg 13); and
- 213 (11) toilets (see reg 14).

Further provisions are made in relation to facilities for disabled persons in wheelchairs, including with regard to:

- 214 (a) wheelchair spaces (see reg 15);
- 215 (b) wheelchair space specifications (see reg 16, Schedule (reg 16 amended by SI 2000/3215; Schedule as so amended));
- 216 (c) sleeping accommodation (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 17);
- 217 (d) tables (see reg 18, Schedule (Schedule as so amended));
- 218 (e) wheelchair-compatible doorways (see reg 19);
- 219 (f) toilets for disabled persons in wheelchairs (see reg 20, Schedule (reg 20 amended by SI 2000/3215; Schedule as so amended));
- 220 (g) wheelchair access to on-board facilities (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 20A (added by SI 2000/3215));
- 221 (h) telephones (see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 21);
- 222 (i) internal doorways (see reg 22);
- 223 (j) boarding devices (see reg 23); and
- 224 (k) catering facilities (see reg 24).

A regulated rail vehicle which ceases to comply with the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456 (as amended) as a result of equipment failure or damage will not be required to comply with the

Regulations in respect of such failure or damage until the sixth day following the occurrence of such failure or damage: reg 3(2) (amended by SI 2000/3215).

4 Discrimination Act 1995 s 46(1).

5 For the meaning of 'disabled person' for these purposes see DISCRIMINATION vol 13 (2007 Reissue) PARA 511.

6 For these purposes, 'regulated rail vehicle' means any rail vehicle to which the rail vehicle accessibility regulations are expressed to apply: Disability Discrimination Act 1995 ss 46(6), 68(1). As from a day to be appointed, this definition is amended so as to refer to any such vehicle to which provisions of those regulations are expressed to apply: s 46(6) (definition prospectively amended by the Disability Discrimination Act 2005 s 19(1), Sch 1 paras 1, 27(b)). However, at the date at which this volume states the law no such day had been appointed.

7 Disability Discrimination Act 1995 s 46(1)(a)(i).

8 Ibid s 46(1)(a)(ii).

9 Ibid s 46(1)(b)(i).

10 Ibid s 46(1)(b)(ii).

11 Ibid s 46(2). As to the regulations so made see note 3 supra.

12 Ibid s 46(2)(a).

13 Ibid s 46(2)(b).

14 Ibid s 46(2)(c).

15 Ibid s 46(2)(d).

16 Ibid s 46(2)(e).

17 For these purposes, 'wheelchair accommodation' has such meaning as may be prescribed: ibid s 46(6). However, at the date at which this volume states the law, no such order had been made.

18 Ibid s 46(2)(f).

19 Ibid s 46(2)(g).

20 Ibid s 46(5). As to the regulations so made see note 3 supra.

21 Ibid s 46(5)(a).

22 Ibid s 46(5)(b).

23 Ibid s 46(5)(c). For these purposes, 'network' means any permanent way or other means of guiding or supporting rail vehicles or any section of it: s 46(6).

24 Until a day to be appointed under the Disability Discrimination Act 2005 s 20(3), for the purposes of the Disability Discrimination Act 1995 s 46 and s 47 (as amended) (see PARA 262 post), a person uses a vehicle for carriage if he uses it for the carriage of members of the public for hire or reward at separate fares: s 46(10) (prospectively repealed: see note 2 supra). As from a day to be appointed, it is provided that, for the purposes of ss 46-47H (as amended; prospectively amended) (see also PARA 262 et seq post), a person uses a vehicle for carriage if he uses it for the carriage of passengers: s 47M(2) (prospectively added by the Disability Discrimination Act 2005 s 8(1)). However, at the date at which this volume states the law, no such day had been appointed.

25 Until a day to be appointed under the Disability Discrimination Act 2005 s 20(3), 'operator', in relation to any rail vehicle, means the person having the management of that vehicle: Disability Discrimination Act 1995 s 46(6) (prospectively repealed by the Disability Discrimination Act 2005 Sch 2). However, at the date at which this volume states the law, no such day had been appointed. As from a day to be appointed, it is provided that for the purposes of the Disability Discrimination Act 1995 ss 46-47H (as amended; prospectively amended) (see also PARA 262 et seq post) 'operator', in relation to any rail vehicle, means the person having the management of that vehicle: s 47M(1) (prospectively added by the Disability Discrimination Act 2005 s 8(1)). However, at the date at which this volume states the law, no such day had been appointed.

26 See the Disability Discrimination Act 1995 s 46(3), (4) (prospectively repealed); and PARA 374 post.

UPDATE

261-263 Rail vehicle accessibility regulations, Exemption from rail vehicle accessibility regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

261 Rail vehicle accessibility regulations

NOTES 2, 6--Day now appointed: SI 2010/341.

NOTE 2--Definition of 'rail vehicle' substituted: SI 2008/1746.

NOTE 3--SI 1998/2456 reg 3(1) amended, reg 3(3) (regulations not applying to rail vehicles used in provision of service for carriage of passengers on high-speed rail system or conventional TEN rail system) added: SI 2008/1746.

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262. Exemption from rail vehicle accessibility regulations.

The Secretary of State¹ may by order (an 'exemption order') authorise the use for carriage² of any regulated rail vehicle³ even though the vehicle does not conform with the provisions of the rail vehicle accessibility regulations⁴ with which it is required to conform⁵. The Secretary of State may also authorise a regulated rail vehicle to be used for carriage otherwise than in conformity with the provisions of rail vehicle accessibility regulations with which use of the vehicle is required to conform⁶. Such authority⁷ may be for any regulated rail vehicle that is specified⁸ or is of a specified description⁹, or for use in specified circumstances of any regulated rail vehicle or any regulated rail vehicle that is specified or is of a specified description¹⁰.

Regulations may make provision with respect to exemption orders¹¹ including, in particular, provision as to the persons by whom applications for exemption orders may be made¹², the form in which such applications are to be made¹³, information to be supplied in connection with such applications¹⁴, the period for which exemption orders are to continue in force¹⁵, and the revocation of exemption orders¹⁶.

After considering any application for an exemption order and consulting the Disabled Persons Transport Advisory Committee and such other persons as he considers appropriate, the Secretary of State may¹⁷ make an exemption order in the terms of the application¹⁸, make an exemption order in such other terms as he considers appropriate¹⁹, or refuse to make an exemption order²⁰. An exemption order may be made subject to such restrictions and conditions as may be specified²¹. There is a requirement for annual reports to be prepared in regard to rail vehicle exemption orders²². Many exemption orders have been made, particularly in respect of certain new trains and rail vehicles which fail to meet the accessibility regulations²³.

¹ As to the Secretary of State see PARA 35 ante.

² As to when a person uses a vehicle for carriage see PARA 261 note 24 ante.

³ For the meaning of 'regulated rail vehicle' see PARA 261 note 6 ante.

⁴ For the meaning of 'rail vehicle accessibility regulations' see PARA 261 note 3 ante.

⁵ Disability Discrimination Act 1995 s 47(1)(a) (s 47(1) substituted, and s 47(1A) added, by the Disability Discrimination Act 2005 s 6(3)).

⁶ Disability Discrimination Act 1995 s 47(1)(b) (as substituted: see note 5 supra).

⁷ Ie under ibid s 47(1)(a) or (b) (as substituted): see the text and notes 1-6 supra.

⁸ 'Specified' means specified in an exemption order: ibid s 47(5).

⁹ Ibid s 47(1A)(a) (as added: see note 5 supra).

¹⁰ Ibid s 47(1A)(b) (as added: see note 5 supra).

¹¹ In exercise of this power, the Secretary of State has made the Rail Vehicle (Exemption Applications) Regulations 1998, SI 1998/2457. Every application for an exemption must be made in writing to the Secretary of State and must contain specified particulars: regs 2, 3. For these purposes 'exemption' means an exemption

under the Disability Discrimination Act 1995 s 47 (as amended) from any relevant requirement, where 'relevant requirement' means any requirement of the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456 (as amended) (see PARA 261 ante) with which a rail vehicle is required to conform: Rail Vehicle (Exemption Applications) Regulations 1998, SI 1998/2457, reg 2. The particulars specified to be contained in an application for an exemption are:

- 225 (1) the full name of the applicant and his address (being in the case of a company the address of its registered or principal office) (see reg 3, Schedule para 1);
- 226 (2) the description of rail vehicle to which the application relates (see Schedule para 2);
- 227 (3) if relevant, the circumstances in which the exemption is to apply (see Schedule para 3);
- 228 (4) every relevant requirement from which the exemption is sought (see Schedule para 4);
- 229 (5) the technical, economic and operational reasons why exemption is sought (see Schedule para 5);
- 230 (6) the effect which non-compliance with any relevant requirement from which exemption is sought would have on a disabled person's ability to use rail vehicles of the description to which the application relates (see Schedule para 6);
- 231 (7) any measures which could be taken to enable disabled persons to use such rail vehicles if the exemption sought is granted (see Schedule para 7);
- 232 (8) any proposals of the applicant for later modification of such rail vehicles to secure their compliance with the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456 (as amended) (see PARA 261 ante), within a stated period (see the Rail Vehicle (Exemption Applications) Regulations 1998, SI 1998/2457, Schedule para 8);
- 233 (9) unless a permanent exemption is sought, the period during which the exemption is to apply (see Schedule para 9);
- 234 (10) such further information as in the opinion of the Secretary of State is necessary to enable him to determine whether to grant the exemption or to impose restrictions or conditions if he grants the exemption (see Schedule para 10).

For these purposes 'use' means (a) in the case of disabled persons, getting on to and off a rail vehicle in safety and without unreasonable difficulty, and being carried in such a vehicle in safety and reasonable comfort; and (b) in the case of disabled persons in wheelchairs, getting on to and off such a vehicle in safety and without unreasonable difficulty while remaining in their wheelchairs, and being carried in such a vehicle in safety and reasonable comfort while remaining in their wheelchairs, and 'to use' is to be construed accordingly: Schedule para 11.

An exemption will continue in force for such period as may be specified in the exemption, but may be revoked by notice by the Secretary of State: (i) at any time if the operator of the relevant regulated rail vehicle so requests (reg 4(1)(a)); or (ii) forthwith if (having consulted the operator) the Secretary of State is satisfied that the operator has failed to comply with any restriction or condition subject to which the exemption was granted (reg 4(1)(b)). Before giving such a notice, the Secretary of State must consult the Disabled Persons Transport Advisory Committee: reg 4(2). As to the Disabled Persons Transport Advisory Committee see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 259.

- 12 Disability Discrimination Act 1995 s 47(2)(a).
- 13 Ibid s 47(2)(b).
- 14 Ibid s 47(2)(c).
- 15 Ibid s 47(2)(d).
- 16 Ibid s 47(2)(e).
- 17 Ibid s 47(3).
- 18 Ibid s 47(3)(a).
- 19 Ibid s 47(3)(b).
- 20 Ibid s 47(3)(c).

21 Ibid s 47(4).

22 See DISCRIMINATION vol 13 (2007 Reissue) PARA 618.

23 See eg the Rail Vehicle Accessibility (Heathrow Express Class 360/2) Exemption Order 2005, SI 2005/86 (amended by SI 2005/1404); the Rail Vehicle Accessibility (Virgin West Coast Class 390) Exemption Order 2005, SI 2005/329; and the Rail Vehicle Accessibility (Gatwick Express Class 458 Vehicles) Exemption Order 2006, SI 2006/933.

UPDATE

261-263 Rail vehicle accessibility regulations, Exemption from rail vehicle accessibility regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

262 Exemption from rail vehicle accessibility regulations

NOTES 5, 6--As to the procedure for making an order see the Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008, SI 2008/2975.

NOTES 11-16--See the Rail Vehicle Accessibility (Applications for Exemption Orders) Regulations 2010, SI 2010/427.

NOTE 23--See also the Rail Vehicle Accessibility (B2007 Vehicles) Exemption Order 2008, SI 2008/925.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(D) Accessibility Requirements for Disabled Passengers/263. Prospective provision made with respect to enforcement of rail vehicle accessibility regulations.

263. Prospective provision made with respect to enforcement of rail vehicle accessibility regulations.

As from a day to be appointed¹, provision is made for: (1) issuing penalty notices in relation to the use of a rail vehicle which does not conform with rail vehicle accessibility regulations²; (2) issuing penalty notices in relation to the use of a rail vehicle otherwise than in conformity with the accessibility regulations³; (3) inspecting regulated rail vehicles which are suspected of not conforming with provisions of the rail vehicle accessibility regulations with which they are required to conform⁴; (4) supplementary powers with regard to using rail vehicles not in conformity with accessibility regulations⁵; (5) issuing rail vehicle accessibility certificates in relation to prescribed regulated rail vehicles⁶; and (6) supplementary provision and procedures in relation to penalties⁷.

¹ ie as from a day to be appointed under the Disability Discrimination Act 2005 s 20(3). At the date at which this volume states the law, no such day had been appointed.

² See the Disability Discrimination Act 1995 ss 47E, 47M (ss 47D-47M prospectively added by the Disability Discrimination Act 2005 s 8(1)); and DISCRIMINATION vol 13 (2007 Reissue) PARA 619. For the meaning of 'rail vehicle accessibility regulations' see PARA 261 note 3 ante.

³ See the Disability Discrimination Act 1995 s 47F (prospectively added: see note 2 supra); and DISCRIMINATION vol 13 (2007 Reissue) PARA 620.

⁴ See *ibid* s 47G (prospectively added: see note 2 supra); and DISCRIMINATION vol 13 (2007 Reissue) PARA 621.

⁵ See *ibid* s 47H (prospectively added: see note 2 supra); and DISCRIMINATION vol 13 (2007 Reissue) PARA 622.

⁶ See *ibid* ss 47A-47C (ss 47A-47C prospectively added by the Disability Discrimination Act 2005 s 7(1)); and the Disability Discrimination Act 1995 s 47D (prospectively added: see note 2 supra); and DISCRIMINATION vol 13 (2007 Reissue) PARA 623.

⁷ See *ibid* ss 47J-47L (prospectively added: see note 2 supra); and DISCRIMINATION vol 13 (2007 Reissue) PARAS 624-626.

UPDATE

261-263 Rail vehicle accessibility regulations, Exemption from rail vehicle accessibility regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/B. SAFE OPERATION AND CONSTRUCTION OF RAILWAY INFRASTRUCTURE, ETC/(D) Accessibility Requirements for Disabled Passengers/264. Requirement for substitute road services to be suitable for disabled passengers.

264. Requirement for substitute road services to be suitable for disabled passengers.

Where a person who provides services for the carriage of passengers by railway¹ provides or secures the provision of substitute road services², or where the provision of such services is secured³, then, in providing or securing the provision of the services, that person must ensure, so far as is reasonably practicable, that the substitute road services allow disabled passengers to undertake their journeys safely and in reasonable comfort⁴. In the event of any failure by a person to so comply, he is liable to pay damages in respect of any expenditure reasonably incurred, or other loss sustained, by a disabled passenger in consequence of the failure⁵.

1 For the meaning of 'services for the carriage of passengers by railway' see PARA 82 note 2 ante; definition applied by the Transport Act 2000 s 254.

2 For the meaning of 'substitute road services' for these purposes see PARA 164 note 13 ante.

3 Is secured by the Secretary of State or the Welsh Ministers or by the Scottish Ministers: see the Transport Act 2000 s 248(1)(b) (as substituted); and PARA 164 ante.

4 See *ibid* s 248(2) (as amended); and PARA 164 ante. As to exemptions from s 248(2) (as amended) which may be granted see PARA 164 ante.

5 See *ibid* s 248(3) (as amended); and PARA 164 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/C. LIABILITY FOR SAFETY FAILURES/265. Directions requiring insurance against liability in respect of death or personal injury.

C. LIABILITY FOR SAFETY FAILURES

265. Directions requiring insurance against liability in respect of death or personal injury.

The Secretary of State¹ may give a direction² to an operator³ of a railway⁴, tramway⁵, trolley vehicle system⁶ or system using any other mode of guided transport⁷. Such a direction may require the person to whom it is given to ensure that there are at all times in force such policies of insurance against liability in respect of death or personal injury as comply with the requirements of the direction⁸. Before giving such a direction, the Secretary of State must consult the person to whom he proposes to give it⁹. If such a direction is contravened, the person to whom the direction was given is guilty of an offence¹⁰.

1 As to the Secretary of State see PARA 35 ante.

2 Ie under the Transport and Works Act 1992 s 46: see s 46(1).

3 For the meaning of 'operator' for these purposes see PARA 357 note 5 post.

4 For the meaning of 'railway' for these purposes see PARA 302 note 4 post.

5 For the meaning of 'tramway' for these purposes see PARA 302 note 4 post.

6 For the meaning of 'trolley vehicle system' for these purposes see PARA 302 note 6 post.

7 Transport and Works Act 1992 s 46(1). For the meaning of 'guided transport' for these purposes see PARA 302 note 7 post.

8 Ibid s 46(2).

9 Ibid s 46(3).

10 See ibid s 46(4), (5); and PARA 373 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(i) Health and Safety/C. LIABILITY FOR SAFETY FAILURES/266. Common law duties of railway undertakers as to vehicles.

266. Common law duties of railway undertakers as to vehicles.

Where a railway undertaker provides vehicles for the carriage of merchandise, it can seldom be material to consider whether there is any warranty that the vehicles are fit for the purpose because any such warranty merges in the wider obligation to carry the merchandise safely¹. Where vehicles are used for the carriage of passengers, although there is no warranty to the passengers that the vehicles are safe, the undertaker is under a duty to provide vehicles that are as safe as care, skill and foresight can make them².

A trader who delivers a vehicle to a railway undertaker to be hauled on the railway on its own wheels, such as a privately owned tank wagon, warrants that it is fit to be hauled³.

1 As to the duty to carry and deliver goods safely see generally CARRIAGE AND CARRIERS.

2 *Readhead v Midland Rly Co* (1869) LR 4 QB 379, Ex Ch. As to the general duty of care to passengers see CARRIAGE AND CARRIERS vol 7 (2008) PARA 39 et seq; and NEGLIGENCE vol 78 (2010) PARA 29 et seq.

3 *Johnson v North Eastern Rly Co* (1888) 5 TLR 68, CA; *Lister v Lancashire and Yorkshire Rly Co* [1903] 1 KB 878, DC.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(ii) Accidents/A. PROTECTION OF THE PUBLIC AND RAILWAY WORKERS FROM INJURY, ETC/267. Prevention of unauthorised access to infrastructure.

(ii) Accidents

A. PROTECTION OF THE PUBLIC AND RAILWAY WORKERS FROM INJURY, ETC

267. Prevention of unauthorised access to infrastructure.

So far as is reasonably practicable, a person in control¹ of any infrastructure² of a transport system³ must ensure, where and to the extent necessary for safety, that unauthorised access⁴ to that infrastructure is prevented⁵.

Breach of a duty so imposed does not confer a right of action in any civil proceedings⁶.

¹ Any reference in the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended), to a person in control of any infrastructure of a transport system is a reference to a person who, in the course of a business or other undertaking carried on by him (whether for profit or not), is in operational control of that infrastructure, except that where such control is for the time being exercised by a person undertaking maintenance, repair or alteration work on the infrastructure, it is a reference to a person who would be in operational control of the infrastructure if such work were not being undertaken: reg 2(3). Any reference to the maintenance of any equipment is a reference to the maintenance of that equipment in an efficient state, in efficient working order and in good repair and, where appropriate, subjecting that equipment to a suitable system of maintenance: reg 2(5).

For these purposes, 'transport system' means a railway, a tramway, a trolley vehicle system or any other system using guided transport except that it does not include a guided bus system or any part of any of those systems which: (1) employs parallel rails forming a track of a gauge of less than 920 mm and is: (a) part of a factory; (b) within a maintenance or goods depot; (2) employs parallel rails forming a track of a gauge of less than 1.432 m and is above ground at a mine or quarry; (3) is below ground at a mine; (4) runs along and at the same level as a street or in any other place to which the public has access (including a place to which the public has access only on making a payment); (5) is used solely for the purposes of carrying out construction work: reg 2(1) (definition amended by SI 2006/599). For these purposes, 'construction work' has the meaning assigned to it in the Construction (Design and Management) Regulations 2007, SI 2007/320 (see reg 2(1); and HEALTH AND SAFETY AT WORK): Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1) (definition amended by SI 2007/320). For these purposes, 'factory' means a factory within the meaning of the Factories Act 1961 s 175 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318 et seq) and premises to which s 123(1)-(2) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 309) or s 125(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 311) applies: Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1). For these purposes, 'mine' has the meaning assigned to it in the Mines and Quarries Act 1954 (see s 180 (as amended); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5); Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1) (definition substituted by SI 1999/2024). For these purposes, 'quarry' has the same meaning as in the Quarries Regulations 1999, SI 1999/2024 (see reg 3; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838): Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1) (definition substituted by SI 1999/2024). For the meaning of 'guided bus system' see PARA 231 note 8 ante; definition applied by the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1) (definition added by SI 2006/599). For the meaning of 'guided transport' see PARA 231 note 6 ante; definition applied by the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1) (definition added by SI 2006/599). For the meaning of 'railway' see PARA 302 note 4 post; definition applied by the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1). For the meaning of 'street' see PARA 302 note 4 post; definition applied by reg 2(1). For the meaning of 'tramway' see PARA 231 note 5 ante; definition applied by reg 2(1) (definition substituted by SI 2006/599). For the meaning of 'trolley vehicle system' see PARA 231 note 9 ante; definition applied by the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1) (definition added by SI 2006/599).

The Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH

AND SAFETY AT WORK vol 52 (2009) PARA 303): see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post; and as to defences to such contravention see PARA 433 post.

2 Any reference in the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended), to the infrastructure of a transport system is a reference to the fixed assets used for the operation of the transport system including its permanent way and plant used for signalling or exclusively supplying electricity for operational purposes to the transport system, but does not include a station: reg 2(2). For these purposes, 'station' means a passenger station or terminal of a transport system but does not include any permanent way or plant used for signalling or exclusively supplying electricity for operational purposes to the transport system: reg 2(1).

3 The provisions of *ibid* reg 3 apply to any transport system except that it does not apply to any part of such a system which is within a harbour, harbour area, maintenance or goods depot, or is part of a factory, mine or quarry, where access to the harbour, harbour area, maintenance or goods depot, factory, mine or quarry is adequately controlled: reg 3(3). For these purposes, 'harbour' and 'harbour area' have the meanings assigned to them by the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (see reg 2(1); and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 700): Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1).

4 For these purposes, 'access' means access by any person not at work on the transport system or by any animal: *ibid* reg 3(2).

5 *Ibid* reg 3(1).

6 *Ibid* reg 3(4).

UPDATE

267 Prevention of unauthorised access to infrastructure

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(ii) Accidents/A. PROTECTION OF THE PUBLIC AND RAILWAY WORKERS FROM INJURY, ETC/268. Requirement for means of communication with passengers.

268. Requirement for means of communication with passengers.

The operator of a vehicle¹ which is being used for the carriage of fare paying passengers must ensure that there is provided and maintained on such a vehicle suitable and sufficient means whereby the passengers can communicate with a person who is in a position to take appropriate action in the event of an emergency².

1 For these purposes, 'vehicle' means a vehicle which is being used on a transport system and includes a mobile traction unit: Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1). Any reference in the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) to a person operating a vehicle is a reference to the person operating the vehicle for the time being in the course of a business or other undertaking carried on by him (whether for profit or not), but it does not include a self-employed person by reason only that he himself drives or otherwise controls the movement of a vehicle: reg 2(4). For the meaning of 'transport system' for these purposes see PARA 267 note 1 ante.

2 Ibid reg 4.

The Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303): see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post; and as to defences to such contravention see PARA 433 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(ii) Accidents/A. PROTECTION OF THE PUBLIC AND RAILWAY WORKERS FROM INJURY, ETC/269. Measures to prevent collisions and derailments.

269. Measures to prevent collisions and derailments.

A person in control of any infrastructure of a transport system¹ must ensure, so far as is reasonably practicable that: (1) appropriate procedures are in place²; and (2) where appropriate, equipment which is suitable and sufficient is provided and maintained³, for the purpose of preventing⁴: (a) collisions between vehicles⁵; (b) collisions between vehicles and buffer-stops⁶; and (c) the derailment of vehicles on account of excessive speed or incorrectly set points⁷.

1 For the meaning of 'transport system' for these purposes see PARA 267 note 1 ante. As to references to persons in control of any infrastructure of a transport system see PARA 267 note 1 ante; and as to references to the infrastructure of a transport system see PARA 267 note 2 ante.

2 Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 5(1)(a).

The Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303); see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post; and as to defences to such contravention see PARA 433 post.

3 Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 5(1)(b). As to references to the maintenance of any equipment see PARA 267 note 1 ante.

4 Ibid reg 5(1).

5 Ibid reg 5(2)(a). For the meaning of 'vehicle' see PARA 268 note 1 ante.

6 Ibid reg 5(2)(b).

7 Ibid reg 5(2)(c).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(ii) Accidents/A. PROTECTION OF THE PUBLIC AND RAILWAY WORKERS FROM INJURY, ETC/270. Brakes requirements.

270. Brakes requirements.

The operator of a vehicle¹ must ensure that a suitable and sufficient braking system is provided and maintained for that vehicle and, where the vehicle is part of a train of vehicles², for that train of vehicles³.

1 For the meaning of 'vehicle' see PARA 268 note 1 ante. As to references to a person operating a vehicle see PARA 268 note 1 ante.

2 For these purposes, 'train of vehicles' means two or more vehicles attached to each other: Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1).

3 Ibid reg 6.

The Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303): see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post; and as to defences to such contravention see PARA 433 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(ii) Accidents/A. PROTECTION OF THE PUBLIC AND RAILWAY WORKERS FROM INJURY, ETC/271. Accidents to persons at work from moving vehicles.

271. Accidents to persons at work from moving vehicles.

A person who is:

- 988 (1) a person in control of any infrastructure of a transport system¹;
- 989 (2) an operator of a vehicle²;
- 990 (3) an employer of a person at work on a transport system³; or
- 991 (4) a self-employed person as it applies to an employer and a person at work on a transport system as if that self-employed person were both the employer and the person at work⁴,

must ensure, so far as is reasonably practicable and in so far as they are matters within his control⁵, that: (a) appropriate procedures are in place⁶; and (b) where appropriate, equipment which is suitable and sufficient is provided and maintained⁷, for the purpose of preventing any person at work on a transport system from being struck by, or falling from, a moving vehicle⁸.

1 Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 7(2)(a). For the meaning of 'transport system' for these purposes see PARA 267 note 1 ante. As to references to persons in control of any infrastructure of a transport system see PARA 267 note 1 ante; and as to references to the infrastructure of a transport system see PARA 267 note 2 ante.

The Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) were made under, and are enforceable under, the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303); see PARA 194 ante. As to the offences made for contravening these provisions see PARA 371 post; and as to defences to such contravention see PARA 433 post.

2 Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 7(2)(b). For the meaning of 'vehicle' see PARA 268 note 1 ante. As to references to a person operating a vehicle see PARA 268 note 1 ante.

3 Ibid reg 7(2)(c).

4 Ibid reg 7(2)(d).

5 Ibid reg 7(1).

6 Ibid reg 7(1)(a).

7 Ibid reg 7(1)(b). As to references to the maintenance of any equipment see PARA 267 note 1 ante.

8 Ibid reg 7(1).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(ii) Accidents/A. PROTECTION OF THE PUBLIC AND RAILWAY WORKERS FROM INJURY, ETC/272. Exemptions from requirements.

272. Exemptions from requirements.

The relevant authority¹ may, by a certificate in writing, exempt any person or class of persons from any requirement imposed by the Railway Safety (Miscellaneous Provisions) Regulations 1997², and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a further certificate in writing at any time³.

The Secretary of State for Defence⁴ may⁵, in the interests of national security, by a certificate in writing exempt any person or class of persons from the requirements of the Railway Safety (Miscellaneous Provisions) Regulations 1997⁶.

1 For these purposes, 'relevant authority' means the Office of Rail Regulation, where it is made the enforcing authority in relation to the operation of a transport system by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1) (see PARA 195 ante), and the Health and Safety Executive in any other case: Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(1) (definition added by SI 2006/557). For the meaning of 'transport system' for these purposes see PARA 267 note 1 ante. As to the Office of Rail Regulation see PARA 49 et seq ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. As to the authority for making these regulations see PARA 194 ante.

2 I.e. the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended). However, the relevant authority must not grant any such exemption unless, having regard to the circumstances of the case (reg 8(2) (amended by SI 2006/557)), and in particular to:

235 (1) the conditions, if any, which it proposes to attach to the exemption (Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 8(2)(a)); and

236 (2) any other requirements imposed by or under any enactment which apply to the case (reg 8(2)(b)),

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it (reg 8(2) (as so amended)).

3 Ibid reg 8(1) (amended by SI 2006/557). This provision is subject to the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 8(2) (as amended) (see note 2 supra) and to any Community obligation of the United Kingdom: reg 8(1) (as so amended). For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

4 As to the Secretary of State for Defence see ARMED FORCES vol 2(2) (Reissue) PARA 2 et seq.

5 I.e. subject to any Community obligation of the United Kingdom: see the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 8(3).

6 Ibid reg 8(3). Any such exemption granted by the Secretary of State may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State by a further certificate in writing at any time: reg 8(3).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(4) RAILWAY SAFETY AND SECURITY/(ii) Accidents/B. REPORTING AND INVESTIGATION OF ACCIDENTS/(A) Responsibility for Reporting and Investigation of Accidents/273. Accident investigation and reporting.

B. REPORTING AND INVESTIGATION OF ACCIDENTS

(A) RESPONSIBILITY FOR REPORTING AND INVESTIGATION OF ACCIDENTS

273. Accident investigation and reporting.

The Secretary of State¹ may make regulations² in connection with the investigation of railway accidents and railway incidents³; and such regulations may, in particular⁴:

- 992 (1) require a person to notify the Rail Accident Investigation Branch⁵ of a railway incident⁶;
- 993 (2) make provision about the timing, form and content of notice given by virtue of head (1) above⁷;
- 994 (3) require a person to take or not to take specified action following an accident or incident either: (a) pending the commencement of an investigation⁸; or (b) during the process of an investigation⁹.

Such regulations may also: (i) create an offence¹⁰; (ii) confer a discretionary function¹¹; and (iii) confer jurisdiction on a court or tribunal¹².

1 As to the Secretary of State see PARA 35 ante.

2 Regulations under the Railways and Transport Safety Act 2003 Pt 1 (ss 1-14): (1) may make provision which applies generally or only in specified cases or circumstances (s 13(1)(a)); (2) may make different provision for different cases or circumstances (s 13(1)(b)); and (3) may include transitional, consequential or incidental provision (s 13(1)(c)). Such regulations must be made by statutory instrument (s 13(2)) and are subject to annulment in pursuance of a resolution of either House of Parliament (s 13(4)), except for regulations under s 1(2) (see note 3 infra), which are not to be made unless a draft has been laid before and approved by resolution of each House of Parliament (s 13(3)).

3 Ibid s 11(1). For the purposes of Pt 1, a reference to a railway accident or railway incident is a reference to an accident or incident which occurs on railway property in so far as it is or may be relevant to the operation of the railway: s 2(1). For these purposes, 'railway' means a railway or tramway within the meaning given by the Transport and Works Act 1992 s 67 (see PARA 302 note 4 post); and 'railway property' means anything which falls within the definitions given in the Railways Act 1993 s 83 (as amended) of 'light maintenance depot' (see PARA 83 note 7 ante), 'network' (see PARA 82 note 8 ante), 'rolling stock' (see PARA 82 note 2 ante), 'station' (see PARA 82 note 5 ante) or 'track' (see PARA 82 note 8 ante), or which falls within the equivalent of any those definitions in relation to a tramway: Railways and Transport Safety Act 2003 s 1(1). The provisions of Pt 1 apply in relation to a property irrespective of whether it belongs to or is used for the purposes of the Crown or a Duchy: s 12. The Channel Tunnel is operated bi-nationally through the Channel Tunnel Intergovernmental Commission and the Channel Tunnel Safety Authority has responsibility for investigating safety-related incidents: see PARA 324 post.

The Secretary of State may by regulations amend s 1 (s 1(2)); and may by regulations: (1) make provision about what is to be or not to be treated as an accident or incident for the purposes of Pt 1 (s 2(2)(a)); (2) make provision about circumstances in which an accident or incident is to be or not to be treated as being relevant to the operation of a railway for the purposes of Pt 1 (s 2(2)(b)); (3) make provision about when an accident is to be treated as serious for the purposes of Pt 1 (s 2(2)(c)). Such regulations may, in particular, make provision by reference to location and to the exercise of a discretion by the Chief Inspector of Rail Accidents or another specified person (s 2(3)); and such regulations making provision about what is to be treated as an incident may, in particular, include an event or omission which does not cause damage or loss but which might cause damage

or loss in different circumstances (s 2(4)). As to the appointment of inspectors of rail accidents, including the Chief Inspector of Rail Accidents, see PARA 275 post.

The Secretary of State, in exercise of his powers under ss 2, 11, 13(1) has made the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992 (amended by SI 2005/3261; SI 2006/557); and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557 (amended by SI 2007/320) (cited in PARA 195 et seq ante). As to the matters referred to in heads (1) to (3) supra see in particular the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, reg 3; and as to the matters referred to in heads (1) to (3) in the text see in particular reg 4.

4 Railways and Transport Safety Act 2003 s 11(2). See note 3 supra.

5 As to the Rail Accident Investigation Branch see PARA 275 et seq post.

6 Railways and Transport Safety Act 2003 s 11(2)(a). See note 3 supra.

7 Ibid s 11(2)(b). See note 3 supra.

8 Ibid s 11(3)(a). See note 3 supra.

9 Ibid s 11(3)(b). See note 3 supra.

10 Ibid s 11(4)(a). See note 3 supra. However, such an offence is not to be an offence punishable by a term of imprisonment exceeding the maximum term which may be imposed by a magistrates' court in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (prospectively amended; prospectively repealed) (maximum of six months' imprisonment on summary conviction unless express provision made to the contrary: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6): see the Railways and Transport Safety Act 2003 s 11(4)(a). As to offences created under the provisions governing accident investigation and reporting see PARA 376 post.

11 Ibid s 11(4)(b). See note 3 supra.

12 Ibid s 11(4)(c). See note 3 supra.

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274. Reporting of accidents.

Subject to the provisions of the Railways and Transport Safety Act 2003¹, the reporting of accidents² is governed generally by the provisions of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995³.

¹ I.e. the Railways and Transport Safety Act 2003 Pt 1 (ss 1-14): see PARAS 273 ante, 275 et seq post.

² For these purposes, 'accident' includes: (1) an act of non-consensual physical violence done to a person at work; and (2) an act of suicide which occurs on, or in the course of the operation of, a relevant transport system, where 'relevant transport system' means a railway, a tramway, a trolley vehicle system or any other system using guided transport but does not include a guided bus system or a trolley vehicle system when it operates on a road: see the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq.

In the case of an inquest into the death of a person who is proved to have been killed on a railway, or to have died in consequence of injuries received on a railway, the coroner must, within seven days after holding the inquest, make a return of the death, including the cause of death, to the Secretary of State in such form as he may require: see the Coroners Act 1988 s 11(8); and CORONERS vol 9(2) (2006 Reissue) PARA 1069.

³ I.e. the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq.

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(B) RAIL ACCIDENT INVESTIGATION BRANCH

275. Establishment of the Rail Accident Investigation Branch.

The Secretary of State¹ must appoint persons as inspectors of rail accidents²; and he must appoint one of the inspectors as the Chief Inspector of Rail Accidents³.

The inspectors so appointed⁴ may be referred to as the 'Rail Accident Investigation Branch' (being a branch of the department of the Secretary of State who appoints them)⁵; and an inspector of rail accidents must carry out such of the functions of the Rail Accident Investigation Branch as may be assigned to him by the Chief Inspector of Rail Accidents⁶.

1 As to the Secretary of State see PARA 35 ante.

2 Railways and Transport Safety Act 2003 s 3(1). As to references to a railway accident for these purposes see PARA 273 note 3 ante.

3 Ibid s 3(2). Regulations made under s 2 may make provision by reference to the exercise of a discretion by the Chief Inspector of Rail Accidents or another specified person (see PARA 273 note 3 ante); and regulations made under s 9 may confer a function on the Chief Inspector of Rail Accidents or on the Branch (see PARA 277 post). See further PARA 276 post.

4 *Ie* under s 3: see s 3(3).

5 Ibid s 3(3).

The appointment of the Rail Accident Investigation Branch follows the pattern of the Air Accident Investigation Branch (see AIR LAW vol 2 (2008) PARA 605); and the Marine Accident Investigation Branch (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 844 et seq).

6 Ibid s 3(4).

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276. General aims of the Rail Accident Investigation Branch.

In exercising its functions, the Rail Accident Investigation Branch¹ must, wherever relevant, aim²: (1) to improve the safety of railways³; and (2) to prevent railway accidents and railway incidents⁴.

The Chief Inspector of Rail Accidents⁵ may arrange for the Rail Accident Investigation Branch to assist any person⁶ and, in particular, assistance may be provided: (a) with or without charge⁷; (b) inside or outside the United Kingdom⁸.

The Secretary of State⁹ must make regulations¹⁰ requiring the Chief Inspector of Rail Accidents to produce once in each calendar year a report in connection with the activities of the Rail Accident Investigation Branch¹¹; and such regulations may, in particular, make provision about: (i) timing of reports¹²; (ii) content of reports¹³; (iii) publication and other treatment of reports¹⁴.

1 As to the establishment of the Rail Accident Investigation Branch see PARA 275 ante.

2 Railways and Transport Safety Act 2003 s 4.

As well as its functions in relation to investigations, reports and recommendations, the Rail Accident Investigation Branch has miscellaneous functions assigned to it under the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, providing for the Branch to conduct studies into, monitor and analyse any matter it considers may be relevant to the effective investigation of accidents or incidents and empowering the Chief Inspector to arrange for the publication of such information and advice as is relevant to the general aims of the Branch referred to in the Railways and Transport Safety Act 2003 s 4: see the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, reg 15.

3 Railways and Transport Safety Act 2003 s 4 para (a). For the meaning of 'railway' for these purposes see PARA 273 note 3 ante.

4 Ibid s 4 para (b). As to references to a railway accident or railway incident for these purposes see PARA 273 note 3 ante.

5 As to the appointment of inspectors of rail accidents, including the Chief Inspector of Rail Accidents, see PARA 275 ante.

6 Railways and Transport Safety Act 2003 s 5.

7 Ibid s 5 para (a).

8 Ibid s 5 para (b). For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

9 As to the Secretary of State see PARA 35 ante.

10 As to the making of regulations under the Railways and Transport Safety Act 2003 Pt 1 (ss 1-14) see PARA 273 note 2 ante.

11 Ibid s 6(1).

The Secretary of State, in exercise of his power under s 6 has made the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992 (amended by SI 2005/3261; SI 2006/557). Accordingly, the Chief Inspector must publish a report on the activities of the Branch on or before 30 September each year in respect of the previous calendar year: Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, reg 14(1). Every such report must contain in respect of the period to which it relates: (1) a summary of the investigations conducted by the Branch (reg 14(2)(a)); (2) a list of the recommendations issued (reg 14(2)(b)); and (3) details of the measures that have been reported to the Branch as having been taken in response to its

recommendations (reg 14(2)(c)). Such a report may contain such other information relating to the activities and aims of the Branch specified in the Railways and Transport Safety Act 2003 s 4 (see the text and notes 1-4 supra) as the Chief Inspector may determine: Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, reg 14(3). The Branch must send to the European Railway Agency a copy of each report published under reg 14(1): see reg 14(4). For these purposes, 'European Railway Agency' means the agency for railway safety and interoperability established by Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency ('Agency Regulation') (OJ L164, 30.04.2004, p 1) (as to which see PARA 28 ante): Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, reg 2(1).

12 Railways and Transport Safety Act 2003 s 6(2)(a). See note 11 supra.

13 Ibid s 6(2)(b). See note 11 supra.

14 Ibid s 6(2)(c). See note 11 supra.

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(C) INVESTIGATION BY THE RAIL ACCIDENT INVESTIGATION BRANCH

277. Investigations conducted by the Rail Accident Investigation Branch.

The Rail Accident Investigation Branch¹:

- 995 (1) must investigate any serious railway accident²;
- 996 (2) may investigate any non-serious railway accident or a railway incident³; and
- 997 (3) must investigate any non-serious railway accident or railway incident if required to do so by or in accordance with regulations made by the Secretary of State⁴.

In investigating an accident or incident, the Branch must try to determine what caused it⁵; and on completion of an investigation the Branch must report to the Secretary of State⁶. The Chief Inspector of Rail Accidents may reopen an investigation if he believes that significant new evidence may be available⁷.

The Secretary of State may make regulations regarding the conduct of investigations by the Rail Accident Investigation Branch⁸; and, in particular, such regulations may:

- 998 (a) confer a function on the Chief Inspector of Rail Accidents or on the Branch⁹;
- 999 (b) make provision in relation to the way in which a function of the Chief Inspector or the Branch is to be performed¹⁰;
- 1000 (c) permit or require the Chief Inspector to appoint a person to conduct or participate in an investigation¹¹;
- 1001 (d) provide for a power of an inspector to be exercisable by a person conducting or participating in an investigation by virtue of head (c) above¹²;
- 1002 (e) permit or require the Chief Inspector to request assistance from another person¹³; and
- 1003 (f) permit or require another person to assist the Chief Inspector¹⁴.

The regulations also may make provision about the preparation, form, content and publication of a report made by the Branch¹⁵; and, in particular, the regulations may: (i) require a report to address the question of what caused an accident or incident¹⁶; (ii) require or permit a report to make, or not to make, a recommendation¹⁷; (iii) require or permit the preparation and publication by the Branch of an interim report¹⁸; (iv) require the Branch to give an opportunity to a person interested in an investigation to comment on a draft report or draft interim report¹⁹; (v) require the Branch to notify a person of the content of a report or interim report before publication²⁰; (vi) require the Branch to give a copy of a report or interim report to a person²¹; (vii) make provision about the timing of publication²².

1 As to the establishment of the Rail Accident Investigation Branch see PARA 275 ante.

2 Railways and Transport Safety Act 2003 s 7(1)(a). For these purposes, a tramway is not to be treated as a railway, despite s 1(1) (as to which see PARA 273 note 3 ante): s 7(2). This provision gives the Chief Inspector of

Rail Accidents discretion as to whether or not to investigate tramway accidents because accidents affecting a road-running part of a tramway would fall normally to the police to investigate (whilst an accident affecting an off-street running part of a tramway would normally be investigated by the Rail Accident Investigation Branch). As to references to a railway accident or railway incident for these purposes see PARA 273 note 3 ante.

3 Ibid s 7(1)(b).

4 Ibid s 7(1)(c). As to the Secretary of State see PARA 35 ante; and as to the making of regulations under Pt 1 (ss 1-14) see PARA 273 note 2 ante.

The Secretary of State, in exercise of his power under s 7(1) has made the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992 (amended by SI 2005/3261; SI 2006/557); and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557 (amended by SI 2007/320) (cited in PARA 195 et seq ante). As to the matters referred to in head (3) in the text see in particular the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, regs 2-3.

5 Railways and Transport Safety Act 2003 s 7(3). In performing a function in relation to an accident or incident, the Branch must not consider or determine blame or liability but may determine and report on a cause of an accident or incident whether or not blame or liability is likely to be inferred from the determination or report: s 7(5). As to the powers available to an inspector of rail accidents for the purpose of conducting an investigation by virtue of s 7 see s 8.

6 Ibid s 7(4). The Branch may conduct an investigation and report whether or not civil or criminal proceedings are in progress or may be instituted: s 7(6). This provision is without prejudice to the operation of the law of contempt of court (s 7(6)); but the Chief Inspector of Rail Accidents may apply to the High Court or the Crown Court for a declaration that the making of a report in connection with a specified accident or incident will not amount to a contempt of court in relation to civil or criminal proceedings which have been or may be instituted in connection with the accident or incident (s 7(7)). See note 5 supra. As to the appointment of inspectors of rail accidents, including the Chief Inspector of Rail Accidents, see PARA 275 ante.

7 Ibid s 7(8).

8 Ibid s 9(1). Such regulations may: (1) create an offence, but not an offence punishable by imprisonment (s 9(5)(a)); (2) confer a discretionary function (s 9(5)(b)); and (3) confer jurisdiction on a court or tribunal (s 9(5)(c)).

The Secretary of State, in exercise of his power under s 9(1), has made the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992 (amended by SI 2005/3261; SI 2006/557); and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557 (amended by SI 2007/320) (cited in PARA 195 et seq ante). As to the matters referred to in heads (a) to (f) in the text see in particular the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, regs 5-7.

9 Railways and Transport Safety Act 2003 s 9(1)(a).

10 Ibid s 9(1)(b).

11 Ibid s 9(1)(c).

12 Ibid s 9(1)(d).

13 Ibid s 9(1)(e).

14 Ibid s 9(1)(f).

15 Ibid s 9(2). The text refers to a report made under s 7 (see the text and notes 1-7 supra): see s 9(2). A reference to a report by the Branch in s 7 includes a reference to an interim report permitted or required by virtue of s 9(2) (see head (iii) in the text): s 9(3). As to the regulations so made see in particular the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, regs 11-13 (reg 12 amended by SI 2005/3261).

The Secretary of State may also make regulations about the use, disclosure and destruction of information acquired by the Branch: Railways and Transport Safety Act 2003 s 9(4). Such regulations may, in particular: (1) prohibit the disclosure of information in specified circumstances (s 9(4)(a)); (2) permit the disclosure of information in specified circumstances (s 9(4)(b)); (3) require the disclosure of information in specified circumstances (s 9(4)(c)); and (4) make provision by reference to whether or not a person consents to a disclosure which relates to him (s 9(4)(d)). As to the matters referred to in heads (1) to (4) supra see in particular the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992, regs 8-10.

16 Railways and Transport Safety Act 2003 s 9(2)(a).

17 Ibid s 9(2)(b).

18 Ibid s 9(2)(c).

19 Ibid s 9(2)(d).

20 Ibid s 9(2)(e).

21 Ibid s 9(2)(f).

22 Ibid s 9(2)(g).

UPDATE

277 Investigations conducted by the Rail Accident Investigation Branch

NOTES 4, 8--SI 2006/557 further amended: SI 2008/2323.

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(D) INVESTIGATION BY INDUSTRY

278. Investigations conducted by industry under direction.

The Chief Inspector of Rail Accidents¹ may direct² that any railway accident or railway incident³ of a specified kind or which occurs in specified circumstances will be investigated by each person who manages or controls or participates in managing or controlling all or any part of railway property⁴: (1) on which the accident or incident takes place⁵; or (2) which is involved in the accident or incident⁶.

Failure to comply with such a direction is an offence⁷.

1 As to the appointment of inspectors of rail accidents, including the Chief Inspector of Rail Accidents, see PARA 275 ante.

2 A direction must specify the manner in which the investigation is to be conducted and may make provision for a case where more than one person would be required to conduct an investigation whether by requiring a joint investigation or by requiring or enabling one or more persons to conduct an investigation on or on behalf of others: Railways and Transport Safety Act 2003 s 10(2). A direction may make provision which applies generally or only in specified circumstances, may make different provision for different cases or circumstances and may be varied or revoked by a further direction: s 10(7).

Such a direction must be published by the Chief Inspector in a manner which he considers will bring it to the attention of each person who is likely to be required to comply with it: s 10(5).

3 As to references to a railway accident or railway incident for these purposes see PARA 273 note 3 ante.

4 Ibid s 10(1). For the meanings of 'railway' and 'railway property' for these purposes see PARA 273 note 3 ante.

5 Ibid s 10(1)(a).

6 Ibid s 10(1)(b).

7 See ibid s 10(3), (4), (6); and PARA 375 post.

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C. LIABILITY FOR ACCIDENTS

279. Liability of railway undertakers for accidents to employees and non-employees.

A railway undertaker is under the same duty as other employers to take reasonable care for the safety of his employees and he may otherwise be liable to an employee in a civil action for breach of statutory duty¹.

A railway undertaker is also under the same common duty of care under the Occupiers' Liability Act 1957 as other occupiers of premises².

1 See PARA 424 post.

2 See PARA 425 post.

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280. Determination of compensation for injury or death.

Where a person has been injured or killed by an accident on a railway¹, the Secretary of State², on written application made jointly by the railway company³ from whom compensation is claimed and the injured person or, if he is killed, his representatives, may, if he thinks fit, appoint an arbitrator to determine the compensation, if any, to be paid by the company⁴. The arbitrator may order the injured person to be examined by a duly qualified medical practitioner named in the order who is not a witness on either side and may make such order as he thinks fit as to the costs of such examination⁵.

1 For the meaning of 'railway' for these purposes see PARA 341 note 1 post.

2 As to the Secretary of State see PARA 35 ante.

3 For the meaning of 'company' for these purposes see PARA 341 note 2 post. The expressions 'company' and 'railway company' are to be treated in the Regulation of Railways Act 1868 s 25 as including (in so far as it does not already do so) any through service operator for the purposes of the Channel Tunnel Act 1987: see s 43, Sch 6 para 3 (amended by the Transport and Works Act 1992 s 68(1), Sch 4 Pt I; and the Inquiries Act 2005 s 49(2), Sch 3). As to the Channel Tunnel see PARA 324 post.

4 Regulation of Railways Act 1868 s 25. Note that this provision relates to compensation as distinct from damages.

5 See *ibid* s 26.

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(iii) Railway Transport Security

A. THE BRITISH TRANSPORT POLICE

281. The British Transport Police.

The British Transport Police have been put on a statutory footing¹ which mirrors the provision made in relation to police forces and authorities in police areas under the Police Act 1996².

The Secretary of State³ must exercise his functions in relation to the British Transport Police Authority⁴ for the purpose of promoting the efficiency and effectiveness of the Police Force⁵; and he may issue a code of practice relating to the performance by the Authority of any of its functions⁶.

As soon as is reasonably practicable after the end of each financial year, the Chief Constable⁷ must submit to the Authority a report⁸, and the Authority must issue its own annual report⁹, about the policing of the railways in that year¹⁰. The Secretary of State may by direction require the Authority or the Chief Constable to submit a report on specified matters connected with the performance of its functions or (as the case may be) his functions¹¹; and the Secretary of State may further require the Chief Constable to supply information about matters relating to crime committed on or in connection with the railways¹².

The Secretary of State may appoint a person to inquire into a matter connected with the Police Force and he may require a person so appointed to conduct the inquiry in public or in private¹³.

1 Ie by the Railways and Transport Safety Act 2003 Pt 3 (ss 18-77), which provides for the creation of a Police Authority for the British Transport Police and for the establishment of the British Transport Police Force: see PARA 282 et seq post.

2 See the Police Act 1996 Pts I-III (ss 1-64) (as amended); and POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

3 As to the Secretary of State see PARA 35 ante.

4 Ie under the Railways and Transport Safety Act 2003 Pt 3: see s 71. As to the British Transport Police Authority see PARA 282 post.

5 Ibid s 71.

6 Ibid s 47(1). A code of practice issued by the Secretary of State under the Police Act 1996 s 39 (as amended) (see POLICE vol 36(1) (2007 Reissue) PARA 200) has effect in relation to the Authority with any necessary modifications and subject to the provisions of a code issued under the Railways and Transport Safety Act 2003 s 47: s 47(3). The Secretary of State may revise a code issued under s 47(1): s 47(2). Where the Secretary of State issues or revises a code under s 47 he must lay before Parliament the code or revision: s 47(4). In Pt 3, 'Authority' means the British Transport Police Authority: s 18(3).

7 As to the Chief Constable see PARA 283 post.

8 See the Railways and Transport Safety Act 2003 s 56.

9 See ibid s 57.

10 See ibid ss 56, 57.

- 11 See *ibid* s 58.
- 12 See *ibid* s 59.
- 13 See *ibid* ss 60, 61.

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282. The British Transport Police Authority.

The body corporate known as the British Transport Police Authority¹, in performing its functions, must aim to ensure the efficient and effective policing of the railways² and must, in particular, have regard:

- 1004 (1) to any objective set by the Authority³;
- 1005 (2) to any objective set by the Secretary of State⁴;
- 1006 (3) to any railways policing plan issued by the Authority⁵;
- 1007 (4) to any performance target set by the Authority⁶; and
- 1008 (5) to any code of practice issued by the Secretary of State, or having effect in relation to the Authority⁷.

The Authority must make, and review from time to time, arrangements to obtain the opinions about the policing of the railways of specified persons, including passengers on the railways⁸.

The Secretary of State may give a direction to the Authority containing provision of a kind which he could make in respect of a best value authority⁹.

¹ See the Railways and Transport Safety Act 2003 s 18(1). Detailed provision is made in relation to the Authority by s 18(2), Sch 4 (as amended) as follows:

- 237 (1) membership (see Sch 4 Pt 1 (paras 1-8) (amended by the Railways Act 2005 s 59(6), Sch 13 Pt 1));
- 238 (2) proceedings (see the Railways and Transport Safety Act 2003 Sch 4 Pt 2 (paras 9-15) (amended by the Police and Justice Act 2006 s 52, Sch 14 para 52(1)));
- 239 (3) money and property (see the Railways and Transport Safety Act 2003 Sch 4 Pt 3 (paras 16-32) (amended by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2005, SI 2005/913, art 3)); and
- 240 (4) status (see the Railways and Transport Safety Act 2003 Sch 4 Pt 4 (para 33)).

The Authority has power to provide advice or assistance, or arrange for the Police Force to provide advice or assistance, to a body which has responsibilities in relation to the policing of a railway outside Great Britain: see s 70. For the meaning of 'Great Britain' see PARA 29 note 3 ante.

² For the purposes of ibid Pt 3 (ss 18-77), including, except where the context requires otherwise, s 75(2)-(5) (interpretation), 'railway' means, within the meaning given by the Transport and Works Act 1992 s 67(1), both a 'railway' (for the meaning of which see PARA 302 note 4 post) and a 'tramway' (for the meaning of which see PARA 302 note 4 post): Railways and Transport Safety Act 2003 s 75(1), (4).

³ Ibid s 19(a). The text refers to any objective set by the Authority under s 50 (amended by the Police and Justice Act 2006 Sch 14 para 49)): see the Railways and Transport Safety Act 2003 s 19(a).

⁴ Ibid s 19(b). The text refers to any objective set by the Secretary of State under s 51: see s 19(b). As to the Secretary of State see PARA 35 ante.

⁵ Ibid s 19(c). The text refers to any railways policing plan issued by the Authority under s 52 (amended by the Police and Justice Act 2006 Sch 14 para 50): see the Railways and Transport Safety Act 2003 s 19(c). Under s 52 (as amended), the Authority, before the beginning of each financial year, must set objectives for policing the railways during that year: see s 52 (as so amended). The Authority must also, before the beginning of each consecutive period of three financial years, issue a plan (a 'three-year strategy plan') which sets out the

Authority's medium-term and long-term strategies for policing the railways during that period: see s 55 (amended by the Police and Justice Act 2006 Sch 14 para 51).

6 Railways and Transport Safety Act 2003 s 19(d). The text refers to any performance target set by the Authority under s 53: see s 19(d).

7 Ibid s 19(e). The text refers to any code of practice issued by the Secretary of State under s 47 (see PARA 281 ante): see s 19(e).

8 See ibid s 62.

9 Ibid s 54(1). The text refers to provision of a kind which may be made by order under the Local Government Act 1999 s 4 (as amended) (performance indicators and standards: see LOCAL GOVERNMENT vol 69 (2009) PARA 705), or in guidance under s 5(6) (performance targets and plans of action: see LOCAL GOVERNMENT vol 69 (2009) PARAS 686 et seq, 703 et seq): see the Railways and Transport Safety Act 2003 s 54(1). The Secretary of State must publish a direction under s 54 (s 54(2)); but, before giving such a direction, he must consult the Authority and any other person he thinks appropriate (s 54(3)).

UPDATE

282 The British Transport Police Authority

TEXT AND NOTE 9-- Railways and Transport Safety Act 2003 s 54(1) now s 54(1), (1A)-(1C) (substituted by Local Government and Public Involvement in Health Act 2007 Sch 8 para 24).

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283. The British Transport Police Force.

The British Transport Police Authority¹ must secure the maintenance of an efficient and effective Police Force² to police the railways³.

The Authority must appoint a Chief Constable⁴ and a deputy Chief Constable of the Police Force⁵ and at least one assistant Chief Constable⁶. The Authority must appoint and employ constables of the Police Force⁷, who are under the direction and control of the Chief Constable⁸. The Chief Constable may appoint special constables of the Police Force⁹, and cadets to undergo training with a view to becoming constables of the Police Force, who are under his direction and control and may be dismissed by him¹⁰. The Secretary of State may issue a code of practice relating to the performance by the Chief Constable of any of his functions¹¹.

In relation to the terms and conditions of employment of constables and other persons employed in the service of the Police Force, the Authority must comply with rules or principles contained in any document issued to them for the purpose by the Secretary of State¹².

Provision is made with respect to the jurisdiction of the British Transport Police Force¹³; and as to its inspection from time to time¹⁴.

1 le 'the Authority': see PARA 281 note 6 ante. As to the British Transport Police Authority see PARA 282 ante.

2 Railways and Transport Safety Act 2003 s 20(1). In particular, the Authority must defray the expenses of the Police Force: s 20(2). In Pt 3 (ss 18-77) 'Police Force' means the force known as the British Transport Police Force: s 20(1)(a), (3); and see, in relation to references in other enactments, s 73(1), Sch 5 para 4(1), (2)(l). As to criminal offences in respect of conduct which might adversely affect the efficiency of the British Transport Police Force see PARA 388 post.

The Secretary of State may make regulations under the Police Act 1996 s 53 (as amended) (standard of equipment: see POLICE vol 36(1) (2007 Reissue) PARA 229) or under s 53A (as added) (regulation of procedure and practice for purpose of facilitating inter-force co-operation: see POLICE vol 36(1) (2007 Reissue) PARA 196), which have effect (whether wholly or partly and whether with modifications or not) in relation to the Police Force: see the Railways and Transport Safety Act 2003 ss 44, 45. As to the making of regulations and orders under Pt 3 see s 74. As to the Secretary of State see PARA 35 ante.

3 Ibid s 20(1)(b). For the meaning of 'railway' for these purposes see PARA 282 note 2 ante.

4 See ibid s 21. In Pt 3 'Chief Constable' means the Chief Constable of the Police Force: s 21(8). As the appointment and functions etc of the Chief Constable see further s 21.

5 See ibid s 22. As the appointment and functions etc of the deputy Chief Constable see further s 22.

6 See ibid s 23. As the appointment and functions etc of an assistant Chief Constable see further s 23.

7 See ibid s 24. As the appointment and functions etc of constables see further s 24. Unless the context requires otherwise, a reference in Pt 3 to a constable of the Police Force includes a reference to a constable of any rank (see s 75(6)) as well as a reference to a special constable of the Police Force (see s 25(6)).

The Police Act 1996 s 89 (as amended) (assault on constable etc: see POLICE vol 36(1) (2007 Reissue) PARA 481) and s 90 (as amended) (impersonation of constable: see POLICE vol 36(1) (2007 Reissue) PARA 481) apply in relation to a constable of the Police Force as they apply in relation to other constables in England and Wales: see the Railways and Transport Safety Act 2003 s 68.

8 See ibid s 25.

9 See ibid s 26. Such a cadet is an employee of the Authority, subject to regulations: see s 26.

10 See *ibid* ss 25, 26.

11 See s 48.

12 See *ibid* s 29. A constable or cadet of the Police Force may not be a member of a trade union: see s 30. The Secretary of State may make regulations about the treatment by the Authority of a person who is or was a constable of the Police Force, and is or was engaged in service outside the Police Force of a specified kind: see s 49.

241 Provision is made also for the Authority to make regulations about:

242 (1) the government, administration and conditions of service of: (a) constables or other persons employed in the service of the Police Force (see s 36); (b) special constables of the Police Force (see s 37); (c) cadets of the Police Force (see s 38);

243 (2) a body to be known as the British Transport Police Federation (and having the function of representing persons employed in the service of the Police Force in matters affecting their welfare and efficiency, subject to certain exceptions) (see s 39).

As to the making of such regulations see ss 40-43. Before the Authority makes regulations under ss 36-38, or the Secretary of State makes regulations under s 42, about the conditions of service of constables, special constables or cadets, before the issuing by the Secretary of State of a document under s 29, and before the taking by the Authority or the Secretary of State of a decision about the conditions of service of constables, special constables or cadets, the Authority or the Secretary of State (as the case may be) must invite the British Transport Police Federation to nominate a number of individuals, not fewer than two nor more than five, to meet with an equal number of individuals nominated by the Authority to discuss the action proposed: see s 46.

13 See *ibid* s 31. Where the Police Force investigates an offence in the course of the exercise of its functions, the Chief Constable may institute criminal proceedings in England and Wales in respect of the offence: see s 32. Where a member of the British Transport Police Force has been requested by a constable of another police force to assist him in the execution of his duties in relation to a particular incident, investigation or operation, members of the British Transport Police Force have for those purposes the same powers and privileges as constables of the requesting force: see the Anti-terrorism, Crime and Security Act 2001 s 100 (amended by the Energy Act 2004 s 69(1), s 197(9), Sch 14 para 10(3), Sch 23 Pt 1).

The Authority may employ persons to assist the Police Force, under the direction and control of either the Chief Constable or the Authority, in accordance with the terms of employment: see the Railways and Transport Safety Act 2003 s 27. The provisions of the Police Reform Act 2002 that relate to police powers and duties conferred on civilians (see *POLICE* vol 36(1) (2007 Reissue) PARAS 529-531) apply in relation to the Police Force as they apply in relation to other police forces: see the Railways and Transport Safety Act 2003 s 28 (amended by the Police and Justice Act 2006 s 52, Sch 14 para 48). See also the Railway Safety Accreditation Scheme Regulations 2004, SI 2004/915 (amended by SI 2004/1573), which were made in exercise of the powers conferred upon the Secretary of State by the Police Reform Act 2002 s 43 (as amended) (see *POLICE* vol 36(1) (2007 Reissue) PARA 532) and which empower the Chief Constable of the British Transport Police Force to accredit suitably skilled and trained non-police employees and grant them specific powers, which can be exercised within the jurisdiction of the Police Force.

14 See the Railways and Transport Safety Act 2003 ss 63-67.

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283 The British Transport Police Force

NOTE 12--Railways and Transport Safety Act 2003 ss 36, 37, 42 amended, s 43 repealed: Criminal Justice and Immigration Act 2008 Sch 22 paras 18-21, Sch 28 Pt 8.

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284. Police services agreements.

The British Transport Police Authority¹ may enter into an agreement (a 'police services agreement') with any person (the 'customer') which provides for the Police Force to police a railway or railway property in connection with which the customer provides railways services².

The Secretary of State may by order require a person who provides railway services (or each member of a class of such persons) to enter into a police services agreement (a 'compulsory police services agreement')³.

1 le 'the Authority': see PARA 281 note 6 ante. As to the British Transport Police Authority see PARA 282 ante.

2 See the Railways and Transport Safety Act 2003 s 33. As to any dispute that might arise between the Authority and a person who has entered into a police services agreement, where the dispute is about the terms, construction or operation of the agreement, see s 35. For the purposes of Pt 3 (ss 18-77), 'railway services' means the management or control, or participation in the management or control, of all or any part or aspect of a railway or railway property (s 75(2)), where 'railway property' means a track, a network, a station, a light maintenance depot, a railway vehicle on a network or tramway, rolling stock on a network or tramway, a train used on a network, and a vehicle used on a tramway: s 75(3). The provisions of Pt 3 apply in relation to property irrespective of whether it belongs to or is used for the purposes of the Crown or a Duchy: see s 72. For the meanings of 'railway' and 'tramway' for these purposes see PARA 282 note 2 ante. For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; definition applied by s 75(5)(a). For the meaning of 'network' see PARA 82 note 8 ante; definition applied by s 75(5)(b). For the meaning of 'rolling stock' see PARA 82 note 2 ante; definition applied by s 75(5)(d). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 75(5)(e). For the meaning of 'track' see PARA 82 note 8 ante; definition applied by s 75(5)(f). For the meaning of 'train' see PARA 82 note 2 ante; definition applied by s 75(5)(g). As to the meaning of 'railway vehicle' see PARA 82 note 2 ante; definition applied by s 75(5)(c).

3 See *ibid* s 34. The Secretary of State, in exercise of the powers conferred upon him by s 34, has made the British Transport Police (Police Services Agreement) Order 2004, SI 2004/1522 (amended by SI 2005/3050).

UPDATE

284 Police services agreements

NOTE 2--See *R (on the application of London & South Eastern Rly Ltd) v British Transport Police Authority* [2009] EWHC 460 (Admin), [2009] All ER (D) 199 (Mar) (attempts made to impose new charging proportions without varying extant agreements were unlawful).

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B. EMERGENCY AND SECURITY POWERS

(A) EMERGENCY SITUATIONS

285. Directions given in emergency situations.

In time of hostilities, whether actual or imminent, severe international tension or great national emergency¹ the Secretary of State may give directions² to such of the following persons as he may consider appropriate³:

- 1009 (1) the Office of Rail Regulation⁴;
- 1010 (2) any person who is the owner or operator⁵ of a relevant asset⁶;
- 1011 (3) any person who provides railway services⁷.

The Secretary of State may at any time give directions⁸ to any person falling within heads (1) to (3) above whom he considers appropriate, requiring that person to participate in the planning of steps that might be taken in time of actual or imminent hostilities, severe international tension or great national emergency⁹.

Any person (other than the Office of Rail Regulation) who suffers direct injury or loss arising from compliance with such a direction¹⁰ is entitled to receive compensation from the Secretary of State of such amount as may be agreed by that person and the Secretary of State or, in default of agreement, of such amount as may be determined¹¹, where the proceedings are to be held in England and Wales¹², by an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors¹³. Any sums required by the Secretary of State for paying such compensation¹⁴ are to be paid out of money provided by Parliament¹⁵.

Any person who, without reasonable excuse, contravenes¹⁶ or fails to comply with such a direction¹⁷ is guilty of an offence¹⁸.

1 For these purposes, 'great national emergency' means any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely to give rise to such disruption of the means of transport that the population, or a substantial part of the population, of Great Britain is or may be likely to be deprived of essential goods or services: Railways Act 1993 s 118(11). As to the Secretary of State see PARA 35 ante. For the meaning of 'Great Britain' see PARA 29 note 3 ante.

2 Ie under *ibid* s 118(1) (as amended): see s 118(1). As to directions given under the Railways Act 1993 generally see s 144 (as amended); and PARA 29 note 13 ante. Special provision is made for the use of electronic communications in the giving or serving of documents for these purposes: see PARA 290 post. There is no limit on the nature and extent of the directions the Secretary of State may give under s 118(1) (as amended); but cf directions given under s 118(2) (see the text and notes 8-9 *infra*).

3 *Ibid* s 118(1).

The provisions of s 118 (as amended), except s 118(7), (8) (see PARA 389 post) bind the Crown: s 150(1)(f).

4 *Ibid* s 118(1)(a) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). The power to give directions under the Railways Act 1993 s 118(1) (as amended) to the Office of Rail Regulation includes power to direct the carrying out of functions in such manner or for such purposes as may be specified in the direction: s 118(3) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 49(1), (3); the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 s 59(6), Sch 13 Pt 1). The

Office of Rail Regulation is under a duty to comply with a direction under the Railways Act 1993 s 118 (as amended), notwithstanding the requirements of any other enactment or instrument: s 118(5) (amended by the Transport Act 2000 s 274, Sch 16 paras 8, 49(1), (4)(b), Sch 31 Pt IV; the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 13 Pt 1). As to the meaning of 'functions' see PARA 7 note 12 ante. As to the Office of Rail Regulation see PARA 49 et seq ante.

5 For these purposes, 'owner', in relation to a relevant asset, means any person who is the owner of, or who has any right over or interest in, the relevant asset, and whose consent is needed to the use of the relevant asset by any other person; and 'operator', in relation to a relevant asset, means the person having the management of the relevant asset for the time being: Railways Act 1993 s 118(11). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4). 'Relevant asset' means a network, a station, a light maintenance depot or any track or rolling stock: s 118(11). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; definition applied by s 118(11) (amended by the Transport Act 2000 Sch 31 Pt IV; and the Railways Act 2005 s 54(1)). For the meaning of 'network' see PARA 82 note 8 ante; definition applied by the Railways Act 1993 s 118(11) (as so amended). For the meaning of 'rolling stock' see PARA 82 note 2 ante; definition applied by s 118(11) (as so amended). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 118(11) (as so amended). For the meaning of 'track' see PARA 82 note 8 ante; definition applied by s 118(11) (as so amended).

6 Ibid s 118(1)(c). The power to give directions under the Railways Act 1993 s 118(1) (as amended) to a person who is the owner or operator of a relevant asset includes power:

- 244 (1) in the case of a person who is the owner of a relevant asset, to direct that person to permit the use of, or to exercise his rights over, the relevant asset in such manner or for such purposes as may be specified in the direction (s 118(4)(a));
- 245 (2) in the case of a person who is the operator of a relevant asset, to direct that person to exercise his powers of management over the relevant asset in such manner or for such purposes as may be so specified (s 118(4)(b)).

A person who is the owner or operator of a relevant asset is under a duty to comply with a direction given to him under s 118 (as amended), notwithstanding the requirements of any other enactment or instrument relating to him or to: (a) the use of, or the exercise of rights over, the relevant asset (s 118(6)(a)); or (b) the management of the relevant asset (s 118(6)(b)), and notwithstanding any other duty or obligation to which he may be subject (s 118(6)).

7 Ibid s 118(1)(d). The power to give directions under s 118(1) (as amended) to a person who provides railway services includes power to direct that person to do so in such manner or for such purposes as may be so specified: s 118(4)(c). A person who provides railway services is under a duty to comply with a direction given to him under s 118 (as amended), notwithstanding the requirements of any other enactment or instrument relating to him or to the railway service (s 118(6)(c)), and notwithstanding any other duty or obligation to which he may be subject (s 118(6)). For the meaning of 'railway services' see PARA 82 ante; definition applied by s 118(11) (as amended: see note 5 supra). For the purposes of s 118 (as amended), 'railway' has its wider meaning (see PARA 82 note 2 ante); definition applied by s 118(11) (as so amended).

8 Ie under ibid s 118(2): see s 118(2).

9 Ibid s 118(2).

10 Ie a direction given under ibid s 118 (as amended): see s 118(9) (as amended: see note 11 infra).

11 Ibid s 118(9) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); and the Railways Act 2005 Sch 13 Pt 1).

12 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

13 Railways Act 1993 s 118(9)(a). As to the Royal Institution of Chartered Surveyors see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS AND SURVEYORS vol 4(3) (Reissue) PARA 499.

14 Ie compensation under ibid s 118 (as amended): see s 118(10).

15 Ibid s 118(10).

16 As to the meaning of 'contravention' in relation to any direction see PARA 70 note 23 ante.

17 Ie a direction given under the Railways Act 1993 s 118 (as amended): see s 118(7).

18 See ibid s 118(7), (8); and PARA 389 post.

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(B) SECURITY SITUATIONS

286. Instructions given to protect against acts of violence.

The Secretary of State¹ may from time to time give:

- 1012 (1) to any person who is the owner or operator² of a relevant asset³; or
- 1013 (2) to any person who provides railway services⁴,

such instructions as the Secretary of State considers appropriate for the purpose of ensuring that relevant assets within Great Britain⁵, or persons or property on or in any such relevant asset, are protected against acts of violence⁶. An instruction⁷ may be given to any person who appears to the Secretary of State to be about to become such a person as is mentioned in head (1) or head (2) above, but an instruction so given to a person⁸ does not take effect until he becomes such a person and, in relation to an instruction so given, the provisions which govern such instructions⁹ apply with the necessary modifications¹⁰. An instruction may¹¹, in particular, require the person to whom it is given (the 'recipient')¹²:

- 1014 (a) not to cause or permit any persons, or any designated¹³ persons, or more than a specified¹⁴ number of persons or designated persons, to enter any relevant asset or any designated relevant asset, or not to cause or permit them to do so unless they submit to a search¹⁵ or unless or until some other specified condition is complied with¹⁶;
- 1015 (b) not to cause or permit any goods¹⁷, or any designated goods, or more than a specified quantity of goods or designated goods, to be brought or loaded on to or into any relevant asset or any designated relevant asset, or not to do so unless the goods in question are subjected to a search or unless or until some other specified condition is complied with¹⁸;
- 1016 (c) to run no trains¹⁹, or to restrict the running of trains, or to run no train unless it is subjected to a search, or unless or until some other specified condition is complied with²⁰;
- 1017 (d) to secure the carrying out of a search of: (i) any designated relevant assets²¹; or (ii) any persons or designated persons who (or any goods or designated goods which) are on or in any such assets²²;
- 1018 (e) to furnish to the Secretary of State such information as he may require for the purpose of protecting against acts of violence²³;
- 1019 (f) to prepare plans specifying action to be taken by the recipient and his servants or agents: (i) in the event that an act of violence of a specified description occurs²⁴; or (ii) in times when there is an increased likelihood of such acts occurring²⁵, and to conduct, at specified intervals, exercises in connection with the implementation of such plans²⁶;
- 1020 (g) to employ specified numbers of suitably trained staff for the purpose of preventing the occurrence of acts of violence²⁷;
- 1021 (h) to meet specified requirements with respect to the construction of, or to make specified modifications to: (i) any relevant assets, or any designated relevant

assets, of which the recipient is the owner or operator²⁸; or (ii) any apparatus or equipment, or any designated apparatus or equipment, on or in any such assets²⁹.

Where any person refuses to submit himself or any goods in his possession to a search required by an instruction, any person authorised to carry out that search may take any steps that are necessary³⁰, including the use of reasonable force³¹, either to prevent the person concerned from entering the relevant asset in relation to which the search is being carried out³², or to eject him, and any goods in his possession, from that asset³³.

A person who is the owner or operator of a relevant asset or who provides railway services is under a duty to comply with an instruction so given to him³⁴, notwithstanding the requirements of any other enactment or instrument relating to him or to: (A) the use of, or the exercise of rights over, the relevant asset³⁵; (B) the management of the relevant asset³⁶; or (C) the railway services³⁷, as the case may be, and notwithstanding any other duty or obligation to which he may be subject³⁸.

A person who without reasonable excuse fails to do anything required of him by an instruction³⁹ is guilty of an offence⁴⁰.

1 As to the Secretary of State see PARA 35 ante.

2 For the meaning of 'operator' and 'owner' for these purposes see PARA 285 note 5 ante; definition applied by the Railways Act 1993 s 119(11) (amended by the Railways Act 2005 s 54(1)).

3 Railways Act 1993 s 119(1)(a). For the meaning of 'relevant asset' for these purposes see PARA 285 note 5 ante; definition applied by s 119(11) (as amended: see note 2 supra). Any reference to such an asset includes a reference to any part of any such asset: s 119(11) (as so amended). As to instructions for the protection of relevant assets wholly in Scotland see s 119(5A), (5B) (s 119(5A), (5B) added by the Railways Act 2005 s 54(2)). The Railways Act 1993 s 119 (as amended) binds the Crown: s 150(1)(g).

4 Ibid s 119(1)(b). For the meaning of 'railway services' see PARA 82 ante; definition applied by s 119(11) (as amended: see note 2 supra). For the purposes of s 119 (as amended), 'railway' has its wider meaning (see PARA 82 note 2 ante); definition applied by s 119(11) (as so amended).

5 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

6 Railways Act 1993 s 119(1). For these purposes, 'act of violence' means any act which constitutes, or any potential act which, if carried out, would constitute, the offence of murder, attempted murder, manslaughter, culpable homicide, assault, real injury or malicious mischief, or an offence under the Offences against the Person Act 1861 s 18, s 20, s 21, s 22, s 23, s 24, s 28 or s 29 (all as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 84 et seq), under the Explosive Substances Act 1883 s 2 (as substituted) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 127) or under the Criminal Damage Act 1971 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334): Railways Act 1993 s 119(11) (as amended: see note 2 supra).

As to the power of the Secretary of State to impose measures for the security of the Channel Tunnel see *R (on the application of Channel Tunnel Group Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 1185, (2001) Times, 7 August, [2001] All ER (D) 300 (Jul).

7 An instruction must be in writing (Railways Act 1993 s 119(6)(a)), must specify the time at which, or the period within which, it is to be complied with, and the period during which it is to have effect (s 119(6)(b)) and may be varied or revoked by the Secretary of State (s 119(6)(c)). 'Instruction' means an instruction given under s 119 (as amended), and any reference to an instruction includes a reference to an instruction as varied under s 119(6)(c): s 119(11) (as amended: see note 2 supra). However, no instruction has effect in relation to any rolling stock which is for the time being in use in police service or in the service of the armed forces of the Crown: s 119(7). For the meaning of 'rolling stock' see PARA 82 note 2 ante; definition applied by s 119(11) (as so amended). As to special provision made for the use of electronic communications in the giving or serving of documents for these purposes see PARA 290 post.

8 Ie by virtue of ibid s 119(2): see s 119(2).

9 Ie the provisions of ibid s 119 (as amended): see s 119(2).

10 Ibid s 119(2). As to the meaning of 'modification' see PARA 33 note 46 ante.

11 Ie without prejudice to the generality of ibid s 119(1) (as amended): see s 119(3).

12 Ibid s 119(3).

13 For these purposes, 'designated' means specified in an instruction, or of a class or description so specified: ibid s 119(11) (as amended: see note 2 supra). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

14 For these purposes, 'specified' means specified in an instruction: ibid s 119(11) (as amended: see note 2 supra).

15 Where an instruction requires the carrying out of a search, it may also specify: (1) the kind of search which is to be carried out (ibid s 119(4)(a)); (2) the manner in which the search is to be carried out (s 119(4)(b)); and (3) the persons, or the class or description of persons, who are to carry out the search (s 119(4)(c)).

16 Ibid s 119(3)(a).

17 As to the meaning of 'goods' see PARA 82 note 3 ante; definition applied by ibid s 119(11) (as amended: see note 2 supra).

18 Ibid s 119(3)(b).

19 For the meaning of 'train' see PARA 82 note 2 ante; definition applied by ibid s 119(11) (as amended: see note 2 supra).

20 Ibid s 119(3)(c).

21 Ibid s 119(3)(d)(i).

22 Ibid s 119(3)(d)(ii).

23 Ibid s 119(3)(e). The text refers to such information as the Secretary of State may require for the purpose mentioned in s 119(1) (see the text and notes 1-6 supra): see s 119(3)(e). As to the meaning of 'information' see PARA 34 note 5 ante. As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see s 146 (cited in PARA 416 post).

24 Ibid s 119(3)(f)(i).

25 Ibid s 119(3)(f)(ii).

26 Ibid s 119(3)(f).

27 Ibid s 119(3)(g). As to railway security services which may be approved for the purpose of complying with a requirement of an instruction under s 119 (as amended), or facilitating a person's compliance with a requirement of such an instruction, see PARA 287 post.

28 Ibid s 119(3)(h)(i).

29 Ibid s 119(3)(h)(ii).

30 Ie but without prejudice to any other powers of the person carrying out the search: see ibid s 119(5).

31 Ibid s 119(5).

32 Ibid s 119(5)(a).

33 Ibid s 119(5)(b).

34 Ie under ibid s 119 (as amended): see s 119(8).

35 Ibid s 119(8)(a).

36 Ibid s 119(8)(b).

37 Ibid s 119(8)(c).

38 Ibid s 119(8).

39 ie an instruction given under ibid s 119 (as amended): see s 119(9); and note 7 supra.

40 See ibid s 119(9), (10); and PARA 390 post.

UPDATE

286-289 Security Situations

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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287. Power of Secretary of State to approve providers of railway security services.

Regulations¹ may provide for the Secretary of State to maintain a list of persons who are approved by him for the provision of a particular railway security service². The regulations may:

- 1022 (1) prohibit the provision of a railway security service by a person who is not listed in respect of that service³;
- 1023 (2) prohibit the use or engagement for the provision of a railway security service of a person who is not listed in respect of that service⁴;
- 1024 (3) create a criminal offence⁵;
- 1025 (4) make provision about application for inclusion in the list (including provision about fees)⁶;
- 1026 (5) make provision about the duration and renewal of entries on the list (including provision about fees)⁷;
- 1027 (6) make provision about training or qualifications which persons who apply to be listed or who are listed are required to undergo or possess⁸;
- 1028 (7) make provision about removal from the list which must include provision for appeal⁹;
- 1029 (8) make provision about the inspection of activities carried out by listed persons¹⁰;
- 1030 (9) confer functions on the Secretary of State or on a specified person¹¹;
- 1031 (10) confer jurisdiction on a court¹².

Accordingly, an instruction given by the Secretary of State for the purpose of ensuring that relevant assets¹³ within Great Britain¹⁴ (or persons or property on or in any such relevant asset) are protected against acts of violence¹⁵ may: (a) include a requirement to use a listed person for the provision of a railway security service¹⁶; (b) provide for all or part of the instruction not to apply or to apply with modified effect where a listed person provides a railway security service¹⁷.

1 Regulations under the Railways Act 1993 s 121A (as added):

- 246 (1) may make different provision for different cases (Railways Act 1993 s 121A(6)(a) (s 121A added by the Railways and Transport Safety Act 2003 s 106));
- 247 (2) may include incidental, supplemental or transitional provision (Railways Act 1993 s 121A(6)(b) (as so added));
- 248 (3) must be made by the Secretary of State by statutory instrument (s 121A(6)(c) (as so added));
- 249 (4) are not to be made unless the Secretary of State has consulted organisations appearing to him to represent persons affected by the regulations (s 121A(6)(d) (as so added)); and
- 250 (5) are to be subject to annulment in pursuance of a resolution of either House of Parliament (s 121A(6)(e) (as so added)).

As to the Secretary of State see PARA 35 ante. As to the making of regulations under the Railways Act 1993 generally see PARA 35 note 12 ante. At the date at which this volume states the law, no such regulations had been made.

2 Ibid s 121A(2) (as added: see note 1 supra). For these purposes, 'railway security service' means a process or activity carried out for the purpose of: (1) complying with a requirement of an instruction under s 119 (as amended) (see PARA 286 ante) (s 121A(1)(a) (as so added)); or (2) facilitating a person's compliance with a requirement of an instruction under s 119 (as amended) (s 121A(1)(b) (as so added)). For the meaning of 'instruction' for these purposes see PARA 286 note 7 ante.

3 Ibid s 121A(3)(a) (as added: see note 1 supra).

4 Ibid s 121A(3)(b) (as added: see note 1 supra).

5 Ibid s 121A(3)(c) (as added: see note 1 supra). Regulations under s 121A(3)(c) (as added): (1) may not provide for a penalty on summary conviction greater than a fine not exceeding the statutory maximum (s 121A(4)(a) (as so added)); (2) may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine) (s 121A(4)(b) (as so added)); and (3) may create a criminal offence of purporting, with intent to deceive, to do something as a listed person or of doing something, with intent to deceive, which purports to be done by a listed person (s 121A(4)(c) (as so added)). As to the statutory maximum see PARA 367 note 6 post.

6 Ibid s 121A(3)(d) (as added: see note 1 supra).

7 Ibid s 121A(3)(e) (as added: see note 1 supra).

8 Ibid s 121A(3)(f) (as added: see note 1 supra).

9 Ibid s 121A(3)(g) (as added: see note 1 supra).

10 Ibid s 121A(3)(h) (as added: see note 1 supra).

11 Ibid s 121A(3)(i) (as added: see note 1 supra).

12 Ibid s 121A(3)(j) (as added: see note 1 supra).

13 For the meaning of 'relevant assets' for these purposes see PARA 286 note 3 ante.

14 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

15 Is an instruction given under the Railways Act 1993 s 119 (as amended) (see PARA 286 ante): see s 121A(5) (as added: see note 1 supra). For the meaning of 'acts of violence' for these purposes see PARA 286 note 6 ante.

16 Ibid s 121A(5)(a) (as added: see note 1 supra).

17 Ibid s 121A(5)(b) (as added: see note 1 supra). As to the meaning of 'modification' see PARA 33 note 46 ante.

UPDATE

286-289 Security Situations

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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288. Enforcement notices.

Where it appears to the Secretary of State¹ that a person upon whom an instruction has been served² has failed, is failing or is likely to fail to comply with that instruction³, he may serve on that person a notice (an 'enforcement notice')⁴ containing such provision as the Secretary of State may consider requisite for the purpose of ensuring that the person complies with the instruction and specifying⁵, in particular:

- 1032 (1) the things, or the description of things, which the person is required to do, or refrain from doing, in order to comply with the instruction⁶;
- 1033 (2) the time within which, or after which, the person must do, or refrain from doing, those things⁷; and
- 1034 (3) the period during which the person is to do, or refrain from doing, those things⁸.

A person who is the owner or operator⁹ of a relevant asset¹⁰ or who provides railway services¹¹ is under a duty to comply with an enforcement notice so given to him¹², notwithstanding the requirements of any other enactment or instrument relating to him or to: (a) the use of, or the exercise of rights over, the relevant asset¹³; (b) the management of the relevant asset¹⁴; or (c) the railway services¹⁵, as the case may be, and notwithstanding any other duty or obligation to which he may be subject¹⁶.

A person who without reasonable excuse fails to do anything required of him by an enforcement notice is guilty of an offence¹⁷.

1 As to the Secretary of State see PARA 35 ante.

2 As to the service of instructions by the Secretary of State see PARA 286 ante. For the meaning of 'instruction' see PARA 286 note 7 ante; definition applied by the Railways Act 1993 s 119(11) (amended by the Railways Act 2005 s 54(1)), the Railways Act 1993 s 120(7). Special provision is made for the use of electronic communications in the giving or serving of documents for these purposes: see PARA 290 post.

3 As to inspections for the purpose of enabling the Secretary of State to determine whether an instruction or enforcement notice has been or is being complied with see PARA 289 post.

4 The Secretary of State may vary or revoke an enforcement notice, and any reference in the Railways Act 1993 s 120 to an enforcement notice includes a reference to such a notice as varied under s 120(2): s 120(2). Where the Secretary of State varies or revokes an enforcement notice under s 120(2) he must serve notice of the variation or revocation on the person on whom the enforcement notice in question was served: s 120(3). For the meaning of 'notice' see PARA 34 note 4 ante.

The Railways Act 1993 s 120, except s 120(4), (5) (see PARA 390 post), binds the Crown: s 150(1)(g).

5 Ibid s 120(1). For the meaning of 'specified' for these purposes see PARA 286 note 14 ante; definition applied by s 119(11) (as amended: see note 2 supra), s 120(7).

6 Ibid s 120(1)(a).

7 Ibid s 120(1)(b).

8 Ibid s 120(1)(c).

9 For the meaning of 'operator' and 'owner' for these purposes see PARA 285 note 5 ante; definition applied by ibid s 119(11) (as amended: see note 2 supra), s 120(7).

10 For the meaning of 'relevant asset' for these purposes see PARA 286 note 3 ante; definition applied by ibid s 119(11) (as amended: see note 2 supra), s 120(7).

11 For the meaning of 'railway services' for these purposes see PARA 82 ante; definition applied by ibid s 119(11) (as amended: see note 2 supra), s 120(7).

12 Ie under ibid s 120: see s 119(8), applied by s 120(6). The provisions of s 119(8) (see PARA 286 ante) have effect in relation to an enforcement notice as they have effect in relation to an instruction: s 120(6).

13 Ibid s 119(8)(a) (as applied: see note 12 supra).

14 Ibid s 119(8)(b) (as applied: see note 12 supra).

15 Ibid s 119(8)(c) (as applied: see note 12 supra).

16 Ibid s 119(8) (as applied: see note 12 supra).

17 See ibid s 120(4), (5); and PARA 390 post.

UPDATE

286-289 Security Situations

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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289. Inspections.

For the purpose of enabling the Secretary of State¹ to determine whether to give an instruction² to any person, or of ascertaining whether any instruction or enforcement notice³ is being or has been complied with, a person authorised for the purpose by the Secretary of State in writing (an 'authorised person') has power, on production (if required) of his credentials, to inspect any relevant asset⁴. An authorised person inspecting a relevant asset⁵ has power⁶:

- 1035 (1) to subject any property found by him on or in the relevant asset, or any apparatus or equipment installed in the relevant asset, to such tests as he considers necessary for the purpose for which the inspection is carried out⁷;
- 1036 (2) to take such steps as he considers necessary for that purpose to ascertain what practices or procedures are being followed in relation to security⁸, or to test the effectiveness of any practice or procedure relating to security⁹; or
- 1037 (3) to require the owner or operator¹⁰ of the relevant asset to furnish to him such information¹¹ as the authorised person considers necessary for that purpose¹².

An authorised person, for the purpose of exercising any power so conferred on him¹³ in relation to any relevant asset, has power¹⁴:

- 1038 (a) to board any rolling stock and to take all such steps as are necessary to ensure that it is not moved¹⁵; or
- 1039 (b) to enter any land or other property comprised either in any track¹⁶ or in a network¹⁷, station¹⁸ or light maintenance depot¹⁹.

A person is guilty of an offence if he: (i) intentionally obstructs an authorised person acting in the exercise of any power conferred on him for the purpose of such inspections²⁰; (ii) fails, without reasonable excuse, to comply with a requirement imposed on him under head (3) above to furnish information to an authorised person²¹; or (iii) in furnishing any information required under head (3) above, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular²².

1 As to the Secretary of State see PARA 35 ante.

2 For the meaning of 'instruction' see PARA 286 note 7 ante; definition applied by the Railways Act 1993 s 121(7). As to the giving of instructions see PARA 286 ante.

3 For the meaning of 'enforcement notice' see PARA 288 ante; definition applied by *ibid* s 121(7). As to enforcement notices see PARA 288 ante.

4 *Ibid* s 121(1). For the meaning of 'relevant asset' see PARA 285 note 5 ante; definition applied by s 119(11) (amended by the Railways Act 2005 s 54(1)), the Railways Act 1993 s 121(7).

The Railways Act 1993 s 121, except s 121(4)-(6) (see the text and notes 20-22 *infra*; and PARA 390 post), binds the Crown: s 150(1)(g).

5 *Ie* under *ibid* s 121(1) (see the text and notes 1-4 *supra*): see s 121(2).

6 *Ibid* s 121(2).

7 Ibid s 121(2)(a). However, nothing in s 121(2)(a) entitles an authorised person to subject any rolling stock, or any part of any rolling stock, to any test: s 121(2). For the meaning of 'rolling stock' see PARA 82 note 2 ante; definition applied by s 119(11) (as amended: see note 4 supra), s 121(7).

8 Ibid s 121(2)(b)(i).

9 Ibid s 121(2)(b)(ii).

10 For the meaning of 'operator' and 'owner' see PARA 285 note 5 ante; definition applied by ibid s 119(11) (as amended: see note 4 supra), s 121(7).

11 As to the meaning of 'information' see PARA 34 note 5 ante; definition applied by ibid s 119(11) (as amended: see note 4 supra), s 121(7). As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended) (cited in PARA 419 post); and as to false statements see head (iii) in the text.

12 Ibid s 121(2)(c).

13 Ie conferred on him by ibid s 121(1), or (2) (see the text and notes 1-12 supra): see s 121(3).

14 Ibid s 121(3). However, nothing in s 121(3) authorises any use of force: s 121(3).

15 Ibid s 121(3)(a).

16 For the meaning of 'track' see PARA 82 note 8 ante; definition applied by ibid s 119(11) (as amended: see note 4 supra), s 121(7).

17 For the meaning of 'network' see PARA 82 note 8 ante; definition applied by ibid s 119(11) (as amended: see note 4 supra), s 121(7).

18 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by ibid s 119(11) (as amended: see note 4 supra), s 121(7).

19 Ibid s 121(3)(b). For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; definition applied by s 119(11) (as amended: see note 4 supra), s 121(7).

20 See ibid s 121(4)(a); and PARA 390 post. The provision referred to in the text is s 121: see s 121(4)(a).

21 See ibid s 121(4)(b); and PARA 390 post.

22 See ibid s 121(4)(c); and PARA 390 post.

UPDATE

286-289 Security Situations

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(C) ELECTRONIC SERVICE OF DOCUMENTS

290. Provision for electronic service of documents in emergency or security situations.

Any document required or authorised¹ to be given or served by the Secretary of State² to or on any person in relation to: (1) directions to be given in time of hostilities (whether actual or imminent), severe international tension or great national emergency³; or (2) instructions to be given to protect against acts of violence⁴, may also be given or served, where an address for service using electronic communications⁵ has been given by that person and not withdrawn⁶, and that person has agreed to accept service by electronic communications of documents in a certain form and has not so withdrawn that agreement⁷, by using electronic communications to send the document in that form to that person at that address⁸. However, a document so given to or served on a person⁹ must be in a form sufficiently permanent to be used for subsequent reference¹⁰. Where a document is so given to or served on a person¹¹, the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person's normal business hours, in which case it is to be taken to have been given or served on the next working day¹².

A document required or authorised¹³ to be given or served by the Secretary of State for these purposes is also to be treated as given or served where¹⁴:

- 1040 (a) that person and the Secretary of State have agreed to his having access to documents of a particular description and in a certain form on a web site¹⁵;
- 1041 (b) that person has not withdrawn his agreement¹⁶;
- 1042 (c) the document in question is a document to which the agreement applies¹⁷;
- 1043 (d) the Secretary of State has given that person a notice, in a manner agreed between them for the purpose¹⁸: (i) stating that the document has been published on a web site maintained by or on behalf of the Secretary of State¹⁹; (ii) setting out the address of that web site²⁰; and (iii) setting out the place on that web site where the document may be accessed and how it may be accessed by that person²¹; and
- 1044 (e) the published document is in a form sufficiently permanent to be used for subsequent reference²².

Where a document is so given to or served on a person²³, the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under head (d) above is given²⁴.

1 le by virtue of the Railways Act 1993 s 118 (as amended) (see head (1) in the text), s 119 (as amended) (see head (2) in the text), s 120 (see head (2) in the text) or s 149A (as added): see s 149A(1) (s 149A added by the Transport Security (Electronic Communications) Order 2006, SI 2006/2190, art 6). However, the provisions of the Railways Act 1993 s 149A (as added) do not apply to any document in relation to the service of which provision is made by the rules of the court: s 149A(10) (as so added).

2 As to the Secretary of State see PARA 35 ante.

3 The directions given under the Railways Act 1993 s 118 (as amended) (see PARA 285 ante). For the meaning of 'great national emergency' see PARA 285 note 1 ante.

4 The instructions given under *ibid* s 119 (as amended) (see PARA 286 ante) and notices under s 120 (see PARA 288 ante) which enforce them. For the meaning of 'acts of violence' for these purposes see PARA 286 note 6 ante.

5 For these purposes, 'address', in relation to electronic communications, means any number or address used for the purposes of such communications; and 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616); Railways Act 1993 s 149A(11) (as added: see note 1 supra).

6 *Ibid* s 149A(1)(a) (as added: see note 1 supra). The text refers to withdrawal of the agreement in accordance with s 149A(6) (as added): see s 149A(1)(a) (as so added). Accordingly, a person who has supplied the Secretary of State with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with s 149A(1) (as added) may give notice to the Secretary of State withdrawing that address or that agreement or both: s 149A(6) (as so added). A withdrawal under s 149A(6) (as added) takes effect on the later of: (1) the date specified by the person in the notice (s 149A(8)(a) (as so added)); and (2) the date which is 14 days after the date on which the notice is given (s 149A(8)(b) (as so added)). Oral notice is not sufficient for these purposes: s 149A(9) (as so added).

7 *Ibid* s 149A(1)(b) (as added: see note 1 supra). The text refers to withdrawal of agreement in accordance with s 149A(6) (as added) (see note 6 supra): see s 149A(1)(b) (as so added).

8 *Ibid* s 149A(1) (as added: see note 1 supra).

9 The in accordance with *ibid* s 149A(1) (as added) (see the text and notes 1-8 supra): see s 149A(2) (as added: see note 1 supra).

10 *Ibid* s 149A(2) (as added: see note 1 supra).

11 The in accordance with *ibid* s 149A(1) (as added) (see the text and notes 1-8 supra): see s 149A(3) (as added: see note 1 supra).

12 *Ibid* s 149A(3) (as added: see note 1 supra). For these purposes, 'working day' means any day other than a Saturday or a Sunday, Christmas Day or Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 s 1 (see TIME vol 97 (2010) PARA 321) in any part of the United Kingdom: Railways Act 1993 s 149A(3) (as so added). For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

13 The by virtue of *ibid* s 118 (as amended) (see PARA 285 ante), s 119 (as amended) (see PARA 286 ante) or s 120 (see PARA 288 ante): see s 149A(4) (as added: see note 1 supra).

14 *Ibid* s 149A(4) (as added: see note 1 supra).

15 *Ibid* s 149A(4)(a) (as added: see note 1 supra). The agreement referred to in head (a) in the text refers to the Secretary of State having access to the documents as mentioned therein instead of their being given to or served on him in any other way specified in s 149 (see PARA 34 note 13 ante) or s 149A (as added): see s 149A(4)(a) (as so added).

16 *Ibid* s 149A(4)(b) (as added: see note 1 supra). The text refers to withdrawal of the agreement in accordance with s 149A(7) (as added): see s 149A(6)(b) (as so added). Accordingly, a person who has an agreement with the Secretary of State under s 149A(4)(a) (as added) (see head (a) in the text) may give notice to the Secretary of State withdrawing that agreement: s 149A(7) (as so added). A withdrawal under s 149A(7) (as added) takes effect on the later of: (1) the date specified by the person in the notice (s 149A(8)(a) (as so added)); and (2) the date which is 14 days after the date on which the notice is given (s 149A(8)(b) (as so added)). Oral notice is not sufficient for these purposes: s 149A(9) (as so added).

17 *Ibid* s 149A(4)(c) (as added: see note 1 supra).

18 *Ibid* s 149A(4)(d) (as added: see note 1 supra).

19 *Ibid* s 149A(4)(d)(i) (as added: see note 1 supra).

20 *Ibid* s 149A(4)(d)(ii) (as added: see note 1 supra).

21 *Ibid* s 149A(4)(d)(iii) (as added: see note 1 supra).

22 *Ibid* s 149A(4)(e) (as added: see note 1 supra).

23 le in accordance with *ibid* s 149A(4) (as added) (see the text and notes 13-22 *supra*): see s 149A(5) (as added: see note 1 *supra*).

24 *Ibid* s 149A(5) (as added: see note 1 *supra*).

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(5) RAILWAY WORKS AND CONSTRUCTION

(i) Statutory Powers

A. OVERVIEW OF STATUTORY POWERS

291. Former authorisation procedure under special Act.

Until the coming into force of the Transport and Works Act 1992¹, authority for the construction of a railway (and the necessary compulsory acquisition of land for that purpose) was usually conferred by special Act². A number of common form clauses came to be included in these special Acts and these were collected and codified in the Railways Clauses Consolidation Act 1845, which applied to every railway authorised to be constructed after 8 May 1845³. The clauses contained in that Act were to be incorporated with every such special Act⁴ with the proviso that the special Act itself may expressly vary or except any of the provisions under the Railways Clauses Consolidation Act 1845⁵.

A copy of the authorising special Act must be kept at the principal office of business of the railway company authorised to construct the works and with the proper officers of counties into which the works extend⁶.

¹ The Transport and Works Act 1992 received Royal Assent on 16 March 1992 and came into force in accordance with various commencement orders made under s 70: see PARA 292 post. A regime consisting of ministerial orders made under that Act has replaced, for most purposes, the former authorisation procedure described in the text and notes 2-6 infra.

² For the purposes of the Railways Clauses Consolidation Act 1845, 'special Act' is construed to mean any Act passed after 8 May 1845 (ie the date on which the Railways Clauses Consolidation Act 1845 received Royal Assent) authorising the construction of a railway: s 2. All terms used in the Railways Clauses Consolidation Act 1845 have the same meanings as the same terms have when used in the Railways Clauses Act 1863: s 3. Special Acts were each made under the private Bill procedure (as to which see PARLIAMENT vol 34 (Reissue) PARA 845 et seq) and, not being public general Acts, are outside the scope of this work.

No statutory authority is needed for the construction of a railway which does not involve interference with any public or private right. In the absence of a special Act, the usual considerations as to town and country planning apply: see TOWN AND COUNTRY PLANNING.

³ ie the date on which the Railways Clauses Consolidation Act 1845 received Royal Assent: see note 2 supra. Prior to that date, each special Act contained its own requisite clauses.

⁴ Subject to what is said in the text and note 5 infra, all the clauses and provisions of the Railways Clauses Consolidation Act 1845 which were to form part of the special Act were to be construed together therewith as forming one Act: see the Railways Clauses Consolidation Act 1845 s 1. The Railways Clauses Act 1863 Pt I (ss 3-19) (as amended) also applied to any railway authorised to be constructed by any special Act passed after 28 July 1863 (ie the date on which that Act received Royal Assent) and which incorporated that part of that Act: see s 3.

⁵ See the Railways Clauses Consolidation Act 1845 s 1 (amended by the Statute Law Revision Act 1891).

⁶ See the Railways Clauses Consolidation Act 1845 s 162. All persons interested must be permitted to inspect and make extracts or copies of the special Act from the copy: see s 162. If the company fails to keep or deposit the copies of the special Act, there is a penalty for non-compliance of level 2 on the standard scale for every such offence and a fine of £5 for every subsequent day of default: see the Railways Clauses Consolidation

Act 1845 s 163 (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 370 note 7 post.

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292. Authorisation of railway works by ministerial order.

The former procedure for authorising railway works, whereby special Acts were made in each case under the private Bill procedure¹, was subjected to scrutiny by the establishment of a Joint Committee on Private Bill Procedure², and then became the subject of a consultation document³, the proposals in which, somewhat modified, culminated in the enactment of Part I of the Transport and Works Act 1992⁴. The effect of the Transport and Works Act 1992 is that railway projects (as well as other similar types of project) can now be authorised by ministerial orders⁵ so that, except in highly exceptional circumstances⁶, they cannot now be made the subject of private Bills⁷.

1 See PARA 291 ante.

2 See the *Report of the Joint Committee on Private Bill Procedure* (July 1988) (HL Paper 97 (1987-88); HC Paper 625 (1987-88)); and PARLIAMENT vol 34 (Reissue) PARA 846. The need for this Report arose due to the excessive demands on Parliament's time occasioned during the late 1980s by the large number of, and intensity of opposition to, private Bills seeking to authorise the construction of new railways. In addition, it was thought somewhat anomalous that 'railway works' needed to be authorised by Parliament whereas equally extensive (and contentious) 'road works' were authorised by means of governmental order-making machinery (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 138 et seq).

3 *le Private Bills and New Procedures - A Consultation Document - The Government Response to the Report of the Joint Committee on Private Bill Procedure* (Cm 1110) (1990).

4 See the Transport and Works Act 1992 ss 1-25 (as amended); and PARA 302 et seq post.

5 See *ibid* ss 1, 3, 4(1); and PARA 302 et seq post.

6 See eg the Channel Tunnel Rail Link Act 1996, which governed the construction, operation and maintenance of the Channel Tunnel Rail Link (a high speed railway between St Pancras in London and Folkestone in Kent) (cited in PARA 324 note 7 post).

7 The preamble to every private Bill has to maintain the averment that the purposes of the Act cannot be effected without the authority of Parliament, and this could not be maintained for the purposes of projects to which the ministerial orders regime attaches once that regime had been established: see PARLIAMENT vol 34 (Reissue) PARA 846.

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B. EFFECT OF STATUTORY POWERS GENERALLY

293. Construction of statutory powers to make a railway.

An authorising provision which confers privileges on its promoters and professes to give the public advantages in return should be construed against the parties obtaining it but liberally in favour of the public¹. However, enactments which confer power to make and work a railway² are as a rule permissive and not mandatory and impose no obligation to make the railway³ but if, on the construction of a particular enactment, an obligation is imposed to make the railway, a mandatory order will be granted to compel the fulfilment of that obligation⁴. Similarly, once a railway has been constructed, there is in general no obligation on the statutory undertaker to maintain it or to restore it should it be destroyed⁵.

An authorising provision conferring powers of compulsory acquisition of land does not constitute a contract between the body on which the powers are conferred and the owner of the land in question so as to give the landowner any rights against the body until it exercises its option to take that person's land by giving him notice to treat⁶.

1 See *Parker v Great Western Rly Co* (1844) 7 Man & G 253 at 288. An authorising provision may be found either in a special Act (see PARA 291 ante) or an order under the Transport and Works Act 1992 (see PARA 292 ante).

2 As to provisions authorising the construction of a railway see PARA 291 et seq ante.

3 *York and North Midland Rly Co v R* (1853) 1 E & B 858, Ex Ch; *Edinburgh, Perth and Dundee Rly Co v Philips* (1857) 2 Macq 514, HL.

4 *Great Western Rly Co v R* (1853) 2 WR 54, Ex Ch; *Browne v Monmouthshire Rly and Canal Co* (1851) 13 Beav 32. As to the grant of a mandatory order (formerly known as an order of mandamus) to enforce statutory rights and duties generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

5 See *R v Great Western Rly Co* (1893) 62 LJQB 572, CA.

6 See *York and North Midland Rly Co v R* (1853) 1 E & B 858, Ex Ch. As to the rights of owners etc to require purchase of interests see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 545 et seq.

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294. Conflict between authorising powers and general legislation.

A general Act may expressly amend a provision in an authorising provision¹. Where the exercise of the powers conferred by an authorising provision would be in conflict with the provisions of some other statute, the rule of construction is that is a general enactment does not abrogate an authorising provision merely by implication² even if the general enactment is of later date³. In determining the question whether it is the general or the authorising provision which is to prevail, the court will look to the words of the statutes and not to byelaws made under the general Act, with reference to the possibility of the works being carried out so as to comply with them⁴. The reason for the adoption of this rule of construction is that it cannot be presumed that the legislature had brought to its consideration all the authorising provisions which affect companies and individuals⁵. If the special powers of railway undertakers are expressly saved in a general Act, the extent of the saving will depend on the construction of the general Act⁶, but if the circumstances in respect of which the authorising provision was passed are entirely changed by the general enactment, the former may be held to have been repealed⁷.

It makes no difference to this rule of construction that the statutory powers in question are exercised on land acquired by agreement and not by compulsory purchase⁸, and the rule applies whether the general Act is enforced by civil⁹ or criminal¹⁰ process.

1 An authorising provision may be found either in a special Act (see PARA 291 ante) or an order under the Transport and Works Act 1992 (see PARA 292 ante). See also the Transport and Works Act 1992 s 5(3)(b) (amendments, repeals, revocations made by a ministerial order) (see PARA 303 post); and the Railways Act 1993 s 153(1) (modifications made under the Railways Act 1993: see PARA 35 ante).

2 See *Ashton-under-Lyne Corpn v Pugh* [1898] 1 QB 45, CA.

3 See *London and Blackwall Rly Co v Limehouse District Board of Works* (1856) 3 K & J 123; *Taylor v Oldham Corpn* (1876) 4 ChD 395. See also *Metropolitan Rly Co v LCC* [1913] 2 KB 249, DC; *A-G v Liverpool Corpn* [1938] Ch 76, [1937] 3 All ER 691, CA.

4 See *Kershaw v London, Midland and Scottish Rly Co* (1924) 23 LGR 592, DC (sanitary conveniences were erected under the special Act and were alleged to infringe local byelaws).

5 See *Thorpe v Adams* (1871) LR 6 CP 125 at 135 per Bovill CJ.

6 *North East-Kent Rly Co v Badger* (1858) 4 Jur NS 454; *Manchester, Sheffield and Lincolnshire Rly Co v Barnsley Union* (1892) 67 LT 119, DC; *Elliott v LCC* [1899] 2 QB 277, DC; *Lewis and Solome v Charing Cross, Euston and Hampstead Rly Co* [1906] 1 Ch 508.

7 See *Duncan v Scottish North-Eastern Rly Co* (1870) 2 HL Cas 20.

8 *Kirby v Harrogate School Board* [1896] 1 Ch 437, CA; and see *City of Glasgow Union Rly Co v Caledonian Rly Co* (1871) LR 2 Sc & Div 160, HL.

9 *London and Blackwall Rly Co v Limehouse District Board of Works* (1856) 3 K & J 123.

10 *Kershaw v London, Midland and Scottish Rly Co* (1924) 23 LGR 592, DC.

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295. Powers conflicting with contractual rights.

The effect of the compulsory acquisition of an interest in land under statutory powers may be to release the former owner of the interest from subsequent breaches of restrictive covenants affecting that interest¹. However, the owner of any land for the benefit of which a covenant was made may be entitled to compensation for injurious affection if the acquiring authority commits a breach of the covenant².

¹ See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 553, 850.

² See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 879. An acquiring authority cannot validly covenant not to use the land for the purposes for which it was acquired: *Ayr Harbour Trustees v Oswald* (1883) 8 App Cas 623, HL (distinguished in *Stourcliffe Estates Co Ltd v Bournemouth Corpn* [1910] 2 Ch 12, CA); *Re South Eastern Rly Co and Wiffin's Contract* [1907] 2 Ch 366; *Re Heywood's Conveyance, Cheshire Lines Committee v Liverpool Corpn* [1938] 2 All ER 230.

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C. LIABILITY IN CONSEQUENCE OF THE EXERCISE OF STATUTORY POWERS

296. Effect of statutory authority on common law liability: compensation.

The effect of statutory authority may be to relieve the railway undertaker from liability at common law for injuries which necessarily result from the exercise of statutory powers without negligence and which would, apart from that authority, be actionable¹. Further, a person who suffers damage through the injurious affection of his land or otherwise by the exercise of statutory powers may only claim compensation from the person exercising those powers where Parliament has given him the right to that compensation².

No indictment will lie against a railway undertaker for an interference with public rights by an act authorised by statute³.

1 *Vaughan v Taff Vale Rly Co* (1860) 5 H & N 679; *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171; *London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45, HL; *Lagan Navigation Co v Lambeg Bleaching, Dyeing and Finishing Co Ltd* [1927] AC 226, HL. See the Railways Act 1993 s 122 (see PARA 427 post) on the effect of statutory authority as a defence to actions in nuisance. See, however, the Railway Fires Act 1905 s 1 (as amended) (cited in PARA 301 post); and the Railways Clauses Consolidation Act 1845 s 16 (cited in PARA 362 post). As to the exercise of statutory powers and the extent to which bodies exercising those powers are exempted from liability see generally ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 19 et seq, 194 et seq.

2 *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 880.

3 *R v Pease* (1832) 4 B & Ad 30 (nuisance by frightening horses on road).

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297. Manner of exercise of statutory powers.

Where undertakers have statutory power to do an act, which the legislature intends to be done although leaving a discretion in the mode of exercise of the power, they are not liable for damage which inevitably results from the exercise of the power¹. However, they are bound to exercise that power with moderation and discretion, in a proper manner and without negligence², and to use all reasonable precautions not to do injury to any persons³.

¹ *London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45, HL (choosing site for cattle yard).

² *Biscoe v Great Eastern Rly Co* (1873) LR 16 Eq 636. See also *Roberts v Charing Cross, Euston and Hampstead Rly Co* (1903) 87 LT 732.

³ *Norton v London and North Western Rly Co* (1878) 9 ChD 623; affd (1879) 13 ChD 268, CA, where it was held in the lower court that a railway company was not entitled to erect a hoarding on its land in order to prevent the acquisition of rights of light over the railway, a point not considered by the Court of Appeal.

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298. Proper precautions during construction.

If, in the construction of an authorised work, two methods of construction are reasonably open to the undertakers, one of which will cause damage whereas the other will be harmless, they may be restrained by injunction from adopting the former course¹.

Undertakers are not liable for temporary annoyance caused to persons living near works which are being constructed, provided they conduct the necessary operations reasonably; but if they conduct them unreasonably, they may be restrained by injunction².

Both the manner in which statutory powers are to be exercised and the precautions to be taken during construction are now subject to a much greater degree of prescription with respect to works authorised by an order under the Transport and Works Act 1992³. In addition, in the absence of any express provision in the authorising provision, statutory undertakers will need to comply with provisions relating to the control of noise on construction sites⁴ and are subject to proceedings by persons aggrieved by statutory nuisances⁵.

1 *Coats v Clarence Rly Co* (1830) 1 Russ & M 181, where a company which had the power to make a bridge over a mill race proposed to make a bridge of small span which would do harm, whereas a large span would avoid injury, was restrained from making the small span. See also *Manser v Northern and Eastern Counties Rly Co* (1841) 2 Ry & Can Cas 380. The choice of an injurious method of exercising statutory powers may constitute negligence: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 189 et seq.

2 In *Roberts v Charing Cross, Euston and Hampstead Rly Co* (1903) 87 LT 732, a company which carried on the work of construction throughout the night as well as by day so that the plaintiff's house was rendered uninhabitable was restrained by injunction from carrying out the night work as not being reasonably necessary; but where night work was shown to be reasonably necessary, an injunction was refused: *Ash v Great Northern, Piccadilly and Brompton Rly Co* (1903) 67 JP 417. See also NUISANCE vol 78 (2010) PARAS 116, 125.

3 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, which suggests model clauses for inclusion in orders made under the Transport and Works Act 1992 s 1 (cited in PARA 302 et seq post).

4 As to the control of noise on construction sites see the Control of Pollution Act 1974 s 60; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 835.

5 See the Environmental Protection Act 1990 s 82 (as amended); and NUISANCE vol 78 (2010) PARA 226.

UPDATE

298 Proper precautions during construction

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--SI 2006/1954 amended: SI 2008/2831, SI 2009/1307.

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299. Liability with regard to use of land or works.

The rule that railway undertakers are relieved from liability to an action for nuisance in respect of the use of their land if the land is being used for a purpose authorised by statute and without negligence¹ applies not only to land acquired under compulsory powers but also to land acquired under a power to purchase further land by agreement for the purposes of additional accommodation².

In using a railway under their powers, undertakers are not responsible for annoyance caused by vibration, noise or smoke which is the inevitable or natural result of that use³, although liability will arise if, by taking reasonable precautions, the annoyance would have been avoided⁴.

¹ See PARA 296 ante.

² *London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45, HL.

³ *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171. The principle set out in the text holds even where the use has caused a depreciation in value of the land of the person complaining, unless some of that land has been taken so as to give a right to statutory compensation for injurious affection: *Hammersmith and City Rly Co v Brand* supra; *Vaughan v Taff Vale Rly Co* (1860) 5 H & N 679, Ex Ch. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 811, 812, 880, 881.

⁴ *Smith v Midland Rly Co and Lancashire and Yorkshire Rly Co* (1877) 37 LT 224, where an injunction was granted against the continuation of a nuisance by smoke and vapour from engine-cleaning sheds erected by a company on its own land near the plaintiff's house. Cf *Morris (t/a Soundstar Studio) v Network Rail Infrastructure Ltd (formerly Railtrack plc)* [2004] EWCA Civ 172, 148 Sol Jo LB 266, [2004] All ER (D) 342 (Feb), where the claimant failed to establish that interference with studio recording equipment caused by the defendant's track circuit was reasonably foreseeable.

Note that for railway works (whether initial, additional or altered) brought into use on or after 1 March 1996, the provisions of the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996, SI 1996/428 (amended by SI 1998/1701), apply. These regulations are made under the Land Compensation Act 1973 s 20 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 861.

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300. Sparks from steam engines.

If railway undertakers use steam engines on their railway without express statutory authority to do so they are absolutely liable¹ for fires caused by sparks from engines². However, railway undertakers generally have statutory powers to use steam engines³ and, therefore, if an engine incorporates up-to-date precautions against the escape of sparks and is used without negligence, they will not be liable at common law for damage resulting from that escape⁴.

The fact that sparks from an engine caused a fire appears to raise a presumption that the undertakers were negligent⁵, but it is always a question of fact whether, on the evidence, they were guilty of negligence in the construction or use of the engine or in some other way in relation to the fire⁶. In the design and construction of a steam engine, the undertakers are bound to use all the available devices (for instance, spark arresters) to avoid doing harm having regard to the likelihood of the danger and the cost and convenience of the remedy⁷, but there is no negligence if the undertakers refuse to use an apparatus the efficiency of which is open to doubt⁸.

Although there may be no negligence in the design, construction or working of the engine, an undertaker may be liable for damage done by fire caused by sparks if, by leaving inflammable material close to the line, its negligence caused the damage⁹.

1 le by application of the rule in *Rylands v Fletcher* (1868) LR 3 HL 330: see NUISANCE vol 78 (2010) PARA 148.

2 *Jones v Festiniog Rly Co* (1868) LR 3 QB 733; and see *Slater v M'Lellan* 1924 SC 854, Ct of Sess. See also the cases as to sparks from engines on highways cited in HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 326; NUISANCE vol 78 (2010) PARA 144.

3 Power to use locomotive engines or other moving power is conferred by the incorporation of the Railways Clauses Consolidation Act 1845 s 86 (amended by the Statute Law Revision Act 1959), in the undertakers' special Act. However, new railways authorised by a Transport and Works Act 1992 order do not normally incorporate the Railways Clauses Consolidation Act 1845 s 86 (as amended): see the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(a), Sch 1; and PARA 305 post.

4 *Vaughan v Taff Vale Rly Co* (1860) 5 H & N 679, Ex Ch (approved in *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171); *Smith v London and South Western Rly Co* (1870) LR 6 CP 14, Ex Ch; *Canadian Pacific Rly Co v Roy* [1902] AC 220, PC. As to modern safety requirements and procedures for the construction and use of new works, plant or equipment and for their use after alterations have been made to them see PARA 203 et seq ante.

5 *Piggot v Eastern Counties Rly Co* (1846) 3 CB 229.

6 See *Aldridge v Great Western Rly Co* (1841) 3 Man & G 515; *Longman v Grand Junction Canal Co* (1863) 3 F & F 736; and the cases cited in notes 4-5 supra, 8 infra.

7 This statement is founded on the direction of Williams J to the jury in *Fremantle v London and North Western Rly Co* (1860) 2 F & F 337 at 340, which was approved on a motion for a new trial by the Court of Common Pleas (1861) 10 CBNS 89 and also in *Dimmock v North Staffordshire Rly Co* (1866) 4 F & F 1058, and in *Groom v Great Western Rly Co* (1892) 8 TLR 253. See also *Parker v London and North Eastern Rly Co* (1946) 175 LT 137 (failure to use recent devices).

8 *Groom v Great Western Rly Co* (1892) 8 TLR 253; *Earl of Shaftesbury v London and South Western Rly Co* (1895) 11 TLR 269, CA. Evidence has been given in these and other cases that a 'spark arrester' used widely at one time by some companies is, in fact, useless: see *Port Glasgow and Newark Sailcloth Co v Caledonian Rly Co*

(1893) 20 R (Ct of Sess) 35, HL. See also *Sellwood v London Midland and Scottish Rly Co* (1946) 175 LT 366 (bad management of the locomotive by the crew).

9 *Smith v London and South Western Rly Co* (1870) LR 6 CP 14, Ex Ch.

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301. The Railway Fires Acts.

Where damage is caused to agricultural land¹ or to agricultural crops by fire arising from sparks or cinders emitted from any locomotive engine used on a railway², the fact that the engine was used under statutory powers does not affect the undertaker's liability for damages³. However, the liability so imposed applies only where the claim for damages does not exceed £3,000⁴ and where written notice of the occurrence of the fire and the intention to claim has been sent to the railway company within seven days of the occurrence of the damage and where written particulars of the damage showing the amount of the claim in money have been sent to the railway company within 21 days of that date⁵.

Where the value of the damage caused exceeds £3,000, the provisions of the Railway Fires Act 1905 may still apply, provided that the claim does not exceed that amount, and it seems that such a claim may be joined in the alternative with a claim for a higher sum as damages for negligence⁶.

A railway undertaker has power to enter on any land, including any part of a plantation, wood or orchard or on any land adjoining thereto, and do all things reasonably necessary for the purpose of extinguishing or arresting the spread of any fire caused by sparks or cinders emitted from any locomotive engine⁷. A railway company exercising such powers must pay full compensation to any person injuriously affected by the exercise of those powers, including compensation in respect of loss of amenity⁸.

1 For these purposes, 'agricultural land' includes arable and meadow land and ground used for pastoral purposes or for market or nursery gardens, and plantations, woods and orchards and also includes fences on that land, but does not include any moorland or buildings: Railway Fires Act 1905 s 4. The Railway Fires Act 1905 applies to agricultural land under the management of the Commissioners of Woods, and to agricultural crops thereon: see s 4. For these purposes, 'agricultural crops' includes any crops on agricultural land, whether growing or severed, which are not led or stacked: s 4. As to the transfer of functions from the Commissioners of Woods see the Forestry (Title of Commissioner of Woods) Order 1924, SR & O 1924/1370, the Crown Estate Act 1956 s 1 (repealed), and the Crown Estate Act 1961 s 1(1). As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280 et seq.

2 For these purposes, 'railway' includes any light railway and any tramway worked by steam power: Railway Fires Act 1905 s 4.

3 Ibid s 1(1). The purpose of the Railway Fires Act 1905 is to put the claimant in the position in which he would have been if the defendant had not been acting under statutory powers, and the damages recoverable include damages in respect of consequential loss which would not be too remote to be recoverable in an action for nuisance: see *J Langlands (Swanley) Ltd v British Transport Commission* [1956] 2 All ER 702, [1956] 1 WLR 890 (where the plaintiff was entitled to recover the amount of government deficiency payment which he would have received on the sale of his damaged crop).

Where any such damage has been caused through the use of an engine by one company on a railway worked by another company, either company is liable in such an action; but, if the action is brought against the company working the railway, that company is entitled to be indemnified in respect of its liability by the company by whom the engine was used: Railway Fires Act 1905 s 1(2). Any reference in s 1(2) to a 'company' includes a reference to any person: (1) who holds a network licence, station licence or light maintenance depot licence under the Railways Act 1993 Pt I (ss 4-83) (as amended); or (2) who is exempt, by virtue of a licence exemption under s 7 (as amended) (see PARA 92 ante), from the requirement to be authorised by licence under Pt I (as amended) to be the operator of a network, station or light maintenance depot: Railway Fires Act 1905 s 1(2A) (s 1(2A), (2B) added by the Railways Act 1993 s 152, Sch 12 para 2(1)). A person such as is mentioned in the Railway Fires Act 1905 s 1(2A) (as added) is regarded for the purposes of s 1(2) as working a railway which

consists of the track (if any) comprised in any network, station or light maintenance depot of which he lawfully acts as the operator by virtue of the licence or licence exemption in question: s 1(2B) (as so added).

For these purposes, the expression 'railway company' includes any person: (a) who holds a licence under the Railways Act 1993 Pt I (as amended); or (b) who is exempt, by virtue of a licence exemption under s 7 (as amended) (see PARA 92 ante), from the requirement to be authorised by licence under Pt I (as amended) to be the operator of a railway asset; or (c) who holds a European licence (for the meaning of which see PARA 92 note 2 ante) granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (as amended) (as to which see PARA 30 et seq ante) or pursuant to any action taken by an EEA state for that purpose: see the Railway Fires Act 1905 s 4 (definition added by the Railways Act 1993 Sch 12 para 2(2); amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 3, Sch 1 Pt 1 para 1(b)). 'EEA' state means a Member State, Norway, Iceland or Liechtenstein: see the Railway Fires Act 1905 s 4 (definition added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, Sch 1 Pt 1 para 1(a)). For the meanings of 'light maintenance depot', 'operator' and 'railway asset' see PARA 83 note 7 ante; definitions applied by the Railway Fires Act 1905 s 4 (amended by the Railways Act 1993 Sch 12 para 2(2)). For the meaning of 'network' see PARA 82 note 8 ante; definition applied by the Railway Fires Act 1905 s 4 (as so amended). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 4 (as so amended). For the meaning of 'track' see PARA 82 note 8 ante; definition applied by s 4 (as so amended). As to licences see PARA 83 et seq ante.

4 Ibid s 1(3) (amended by the Transport Act 1981 s 38(1)). The Secretary of State, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, may prescribe a greater sum: see the Railway Fires Act 1905 s 1(3) (as so amended), s 1(3A) (added by the Transport Act 1981 s 38(1)). As to the Secretary of State see PARA 35 ante. At the date at which this volume states the law no orders had been made under this provision.

5 See the Railway Fires Act (1905) Amendment Act 1923 s 2 (amended by the Transport Act 1981 ss 38(2), 40(1), Sch 12 Pt III; and the Railways Act 1993 Sch 12 para 3). The sending of these particulars is a condition precedent to the right to the statutory remedy (see *Martin v Great Eastern Rly Co* [1912] 2 KB 406; and see, subsequently, the heading to the Railway Fires Act (1905) Amendment Act 1923 s 2 (as amended)), but it is not necessary that the notice of claim or particulars of damage should purport to be given under the Railway Fires Act 1905 (*A-G v Great Western Rly Co* [1924] 2 KB 1).

6 See *A-G v Great Western Rly Co* [1924] 2 KB 1. As to the construction of a release and indemnity clause in a lease by which the tenant of a railway company undertook to release and indemnify the company from liability for injury or damage however caused, whether or not by act or neglect of the company or its employees and which, apart from the tenancy, would not have arisen see *John Lee & Son (Grantham) Ltd v Railway Executive* [1949] 2 All ER 581, CA (where the tenant's goods stored in the demised premises were damaged by fire which the tenant alleged was by a spark from one of the company's engines).

7 See the Railway Fires Act 1905 s 2(1), (2). In the case of a plantation, wood or orchard, the actions to be taken may include cutting down and clearing away any undergrowth but do not include, without the consent of the owner, the cutting down or injuring of any trees, bushes or shrubs: see s 2(2).

8 See *ibid* s 2(3).

UPDATE

301 The Railway Fires Acts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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(ii) Power to Make Works under Ministerial Orders

A. IN GENERAL

302. Orders authorising works as to railways, etc.

The Secretary of State¹ may make an order² relating to, or to matters ancillary to, the construction or operation of a transport system of any of the following kinds, so far as it is in England and Wales³: (1) a railway⁴; (2) a tramway⁵; (3) a trolley vehicle system⁶; or (4) a system using a mode of guided transport⁷ prescribed by order⁸.

A body which has power to promote or power to oppose Bills in Parliament also has power to apply for, or as the case may be power to object to, such orders⁹. Where the power of a body to promote or to oppose Bills is subject to any condition, then, the corresponding power conferred on the body¹⁰ is subject to the like condition¹¹.

1 As to the Secretary of State see PARA 35 ante. See also note 2 infra.

2 The power to make orders under the Transport and Works Act 1992 s 1 is exercisable by statutory instrument: s 1(2). The order-making function of the Secretary of State under s 1 is transferred so as to be exercisable in relation to Wales by the Welsh Ministers, except where any order made thereunder would have effect both in Wales and England, when it is subject to constraint: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 5, Schs 1, 2 (as amended); and PARA 35 ante. For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

For the matters as to which provision may be made by an order under the Transport and Works Act 1992 see PARA 303 post. As to the validity of orders so made see PARA 318 post. The Transport and Works Act 1992 s 1 must be read in conjunction with the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 79-82: see PARA 319 et seq post. See also OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 753; and ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1587.

3 Transport and Works Act 1992 s 1(1).

On making an order under the Transport and Works Act 1992 s 1 which includes provision for development, the Secretary of State may direct that planning permission for that development is deemed to be granted, subject to such conditions, if any, as may be specified in the direction (see the Town and Country Planning Act 1990 s 90(2A) (as added); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238); and on making any such order which includes any provision that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent is deemed to be granted, subject to such conditions, if any, as may be specified in the direction (see the Planning (Hazardous Substances) Act 1990 s 12(2A) (as added); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1254). Land whose compulsory acquisition is authorised by an order under the Transport and Works Act 1992 (or which falls within the limits of deviation within which powers of compulsory acquisition conferred by such an order are exercisable) is blighted land for the purposes of the Town and Country Planning Act 1990: see s 149(1), Sch 13 para 23 (as added); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 986.

As to orders made by the Secretary of State under the Transport and Works Act 1992 s 1, and their relationship to the application of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 as set out in the Human Rights Act 1998 Sch 1 Pt I, see *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, [2001] 2 All ER 929; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Transport and Works Act 1992 s 1(1)(a). 'Railway' means a system of transport employing parallel rails which: (1) provide support and guidance for vehicles carried on flanged wheels; and (2) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level); but

does not include a tramway, where 'tramway' means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which: (a) provide support and guidance for vehicles carried on flanged wheels; and (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment): s 67(1). For these purposes, 'street' means a street within the meaning of the New Roads and Street Works Act 1991 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9), together with land on the verge of a street or between two carriageways: Transport and Works Act 1992 s 67(1). 'Vehicle' includes mobile traction unit: s 67(1).

5 Ibid s 1(1)(b).

6 Ibid s 1(1)(c). 'Trolley vehicle system' means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles): s 67(1).

7 For these purposes, 'guided transport' means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way): ibid s 67(1).

8 Ibid s 1(1)(d). The Secretary of State may prescribe modes of guided transport for the purposes of s 1(1)(d): s 2(1). The power to make orders under s 2 is exercisable by statutory instrument; but no order is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament: s 2(2). As to orders made under s 2 see the Transport and Works (Guided Transport Modes) Order 1992, SI 1992/3231 (amended by SI 1997/1951) (monorail, magnetic levitation, aerial cabling and various road/rail guidance systems); and see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARAS 1632-1633. The order-making power under the Transport and Works Act 1992 s 2 is excepted from the transfer of functions to the Welsh Ministers: see PARA 35 ante. The Secretary of State also has power to make orders relating to works to inland waterways: see ss 3-4; and PARA 522 post.

9 See ibid s 20(1). The text refers to orders under both s 1 (railways, tramways, etc: see the text and notes 1-8 supra) and s 3 (inland waterways, etc: see PARA 522 post): see s 20(1).

10 Ie by ibid s 20(1): see s 20(2) (as amended: see note 11 infra).

11 See ibid s 20(2) (amended by the Greater London Authority Act 1999 s 168(1), (2)). In the case of Transport for London, the powers conferred by the Transport and Works Act 1992 s 20(1) are exercisable with the written consent of the Mayor of London; and s 20(2) (as amended) has no effect: s 20(4) (added by the Greater London Authority Act 1999 s 168(1), (3)). As to Transport for London see PARA 66 et seq ante. As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

UPDATE

302 Orders authorising works as to railways, etc

NOTE 8--See also the Network Rail (Thameslink) (Land Acquisition) Order 2008, SI 2008/3163.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/ (ii) Power to Make Works under Ministerial Orders/A. IN GENERAL/303. Subject matter of orders as to railways.

303. Subject matter of orders as to railways.

The matters as to which the Secretary of State¹ may by order make provision² include the following³:

- 1045 (1) the construction, alteration, repair, maintenance, demolition and removal of railways⁴, tramways⁵, trolley vehicle systems⁶ and other transport systems within the meaning of the Transport and Works Act 1992⁷, waterways, roads, watercourses, buildings and other structures⁸;
- 1046 (2) the carrying out of any other civil engineering or other works⁹;
- 1047 (3) the acquisition of land, whether compulsorily or by agreement¹⁰;
- 1048 (4) the creation and extinguishment of rights over land¹¹ (including rights of navigation over water), whether compulsorily or by agreement¹²;
- 1049 (5) the abrogation and modification of agreements relating to land¹³;
- 1050 (6) the conferring on persons providing transport services of rights to use systems belonging to others¹⁴;
- 1051 (7) the protection of the property or interests of any person¹⁵;
- 1052 (8) the imposition and exclusion of obligations or of liability in respect of any acts or omissions¹⁶;
- 1053 (9) the making of agreements to secure the provision of police services¹⁷;
- 1054 (10) the carrying out of surveys and the taking of soil samples¹⁸;
- 1055 (11) the payment of compensation¹⁹;
- 1056 (12) the charging of tolls, fares (including penalty fares) and other charges, and the creation of summary offences in connection with non-payment (or in connection with a person's failure to give his name or address in accordance with provisions relating to penalty fares)²⁰;
- 1057 (13) the making of byelaws by any person and their enforcement, including the creation of summary offences²¹;
- 1058 (14) the payment of rates²²;
- 1059 (15) the transfer, leasing, discontinuance and revival of undertakings²³;
- 1060 (16) the submission of disputes to arbitration²⁴;
- 1061 (17) the imposition of requirements to obtain the consent of the Secretary of State²⁵.

Such an order²⁶ may make provision in relation to more than one scheme, system or mode of transport²⁷. It may also apply, modify or exclude any statutory provision²⁸ which relates to any matter as to which such an order could be made²⁹; and make such amendments, repeals and revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order³⁰.

The provisions that may be made by such an order include³¹:

- 1062 (a) any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to: (i) any other provision of the order³²; (ii) any provision of an earlier order³³; or (iii) any provision which is contained in an Act of Parliament passed before the time when Part I of the Transport and Works Act 1992

was first wholly in force³⁴, or in an instrument made under an Act of Parliament before that time, and which is of a kind which could be included in an order as mentioned above³⁵; and
 1063 (b) such supplemental and transitional provisions as appear to him to be necessary or expedient in connection with the order³⁶.

A provision of such an order relating to offences may not authorise the imposition on persons convicted of an offence of a term of imprisonment or of a fine exceeding level 3 on the standard scale³⁷. Nor may such an order extinguish any public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or will be provided³⁸, or that the provision of an alternative right of way is not required³⁹.

1 As to the Secretary of State see PARA 35 ante. The powers of the Secretary of State under the Transport and Works Act 1992 s 5, Sch 1 are transferred so as to be exercisable in relation to Wales by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 35 ante.

2 le by order under the Transport and Works Act 1992 s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 5(1).

3 Ibid s 5(1). The power to make such orders is without prejudice to the generality of s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): s 5(1).

4 For the meaning of 'railway' see PARA 302 note 4 ante.

5 For the meaning of 'tramway' see PARA 302 note 4 ante.

6 For the meaning of 'trolley vehicle system' see PARA 302 note 6 ante.

7 le other transport systems within the meaning of the Transport and Works Act 1992 s 1(1) (see PARA 302 ante): Sch 1 para 1.

8 Ibid Sch 1 para 1.

9 Ibid Sch 1 para 2.

10 Ibid Sch 1 para 3. As to the compulsory acquisition of land see PARA 306 post.

11 References in the Transport and Works Act 1992 to 'rights over land' include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface: s 67(2).

12 Ibid Sch 1 para 4.

13 Ibid Sch 1 para 5.

14 Ibid Sch 1 para 6. As to access agreements see PARA 102 et seq ante.

15 Ibid Sch 1 para 7. This provision protects eg electricity, gas, water and sewerage undertakers, telecommunications operators and railway undertakers. As to the protective provisions for street authorities see the New Roads and Street Works Act 1991; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

16 Transport and Works Act 1992 Sch 1 para 8.

17 Ibid Sch 1 para 9. As to the transport police see PARA 281 et seq ante.

18 Ibid Sch 1 para 10.

19 Ibid Sch 1 para 11. This provision applies eg to compensation for the acquisition of land: see PARA 306 post.

20 Ibid Sch 1 para 12. As to penalty fares see PARA 396 et seq post.

21 Ibid Sch 1 para 13. As to byelaws see further PARA 18 et seq ante.

22 Ibid Sch 1 para 14.

23 Ibid Sch 1 para 15.

24 Ibid Sch 1 para 16.

25 Ibid Sch 1 para 17.

26 Ie an order under ibid s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 5(2).

27 Ibid s 5(2). This provision allows a railway undertaker to bundle together a number of non-controversial schemes in one order.

28 For the purposes of ibid s 5(3), 'statutory provision' means provision of an Act of Parliament or of an instrument made under an Act of Parliament: s 5(3).

29 Ibid s 5(3)(a). The text refers to an order under s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post), as the case may be: see s 5(3)(a).

30 Ibid s 5(3)(b).

31 Ibid s 5(4). The text refers to an order under s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post), as the case may be: see s 5(4).

32 Ibid s 5(4)(a)(i).

33 Ibid s 5(4)(a)(ii). The text refers to an earlier order under s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post), as the case may be: see s 5(4)(a)(ii).

34 Ie 1 January 1993: see the Transport and Works Act 1992 (Commencement No 3 and Transitional Provisions) Order 1992, SI 1992/2784, art 2(a), Sch 1.

35 Transport and Works Act 1992 s 5(4)(a)(iii).

36 Ibid s 5(4)(b).

37 Ibid s 5(5). As to the standard scale see PARA 370 note 7 post.

38 Ibid s 5(6)(a).

39 Ibid s 5(6)(b).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/ (ii) Power to Make Works under Ministerial Orders/A. IN GENERAL/304. Orders made by the Secretary of State without application.

304. Orders made by the Secretary of State without application.

The Secretary of State¹ may, without any application being made to him², make: (1) an order³ relating to, or to matters ancillary to, the construction for naval, military, air force or other defence purposes of a railway⁴, tramway⁵ or other system within the meaning of the Transport and Works Act 1992⁶, or the operation of a railway, tramway or other system constructed for those purposes⁷; (2) an order⁸ making any provision which appears to the Secretary of State to be necessary or expedient, in the interests of safety, for the purpose of suspending or discontinuing any operations, or in consequence of the abandonment or neglect of any works⁹; or (3) an order¹⁰ repealing or revoking provisions which appear to the Secretary of State to be spent¹¹.

1 As to the Secretary of State see PARA 35 ante. The function of the Secretary of State under the Transport and Works Act 1992 s 7 (as amended) is transferred so as to be exercisable in relation to Wales by the Welsh Ministers, except the order-making function of the Secretary of State under s 7(1)(a) (see head (1) in the text); see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 35 ante.

2 As to orders made by the Secretary of State on an application being made to him see PARA 307 post.

3 I.e. an order under the Transport and Works Act 1992 s 1 (see PARA 302 ante): see s 7(1)(a). See further, in relation to orders made by the Secretary of State in the exercise of this power s 9 (as amended) (proposals which in the opinion of the Secretary of State are of national significance) (see PARA 317 post); s 10 (objections to an application under s 7) (see PARA 311 post); s 11 (as amended) (inquiries and hearings) (see PARA 312 post); s 13 (making or refusal of orders under s 1) (see PARA 314 post); s 14 (as amended) (publicity for making or refusal of orders) (see PARA 314 post); and s 15 (assimilation of procedures) (see PARA 316 post).

4 For the meaning of 'railway' see PARA 302 note 4 ante.

5 For the meaning of 'tramway' see PARA 302 note 4 ante.

6 I.e. within the meaning of the Transport and Works Act 1992 s 1(1) (see PARA 302 ante): see s 7(1)(a).

7 Ibid s 7(1)(a).

8 I.e. an order under ibid s 1 (see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 7(1)(b).

9 Ibid s 7(1)(b). Such an order may include provision for the recovery by the Secretary of State of the costs of making the order and of carrying its provisions into effect: s 7(2).

10 I.e. an order under ibid s 1 (see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 7(1)(c).

11 Ibid s 7(1)(c). As to the procedure for making such an order see PARA 307 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/ (ii) Power to Make Works under Ministerial Orders/A. IN GENERAL/305. Works powers.

305. Works powers.

An order under the Transport and Works Act 1992 as to railways¹ may make provision for matters ancillary to the construction or operation of a transport system, and with respect to railways such provision may include², in relation to the construction and maintenance of the authorised works³:

- 1064 (1) power to deviate laterally⁴ or vertically⁵;
- 1065 (2) power to construct and maintain⁶: (a) works to alter the position of apparatus⁷, including mains, sewers, drains and cables⁸; (b) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses⁹; (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works¹⁰; and (d) works for the benefit or protection of premises affected by the authorised works¹¹;
- 1066 (3) power to stop up streets either permanently¹² or temporarily¹³; to construct and maintain new or altered streets¹⁴; to construct bridges and tunnels¹⁵; and to enter into agreements with street authorities¹⁶;
- 1067 (4) power to gain access to works¹⁷; and
- 1068 (5) power to survey and investigate land¹⁸.

1 Ie an order under the Transport and Works Act 1992 s 1(1)(a) (see PARA 302 ante): see the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(a).

2 As to the power to operate and use railways see *ibid* art 3(a), Sch 1 para 34.

3 *Ibid* Sch 1 para 4(1), (3).

4 Ie the undertaker of the works may deviate laterally from the lines or situations shown on the works plan within the limits of deviation for that work shown on the plan: *ibid* Sch 1 para 5(a). Subject to Sch 1 para 5, the scheduled works may only be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections: Sch 1 para 4(2). For these purposes, 'works plan' means the plan prepared in pursuance of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 12 (see PARA 309 post) and certified as the works plan for the purposes of the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954: see Sch 1 para 1(1). As to the certification of plans see Sch 1 para 42.

5 Ie the undertaker of the works may deviate vertically from the levels shown on the sections (submitted with the draft) to any extent not exceeding three metres upwards or to any extent downwards as may be found to be necessary or convenient: *ibid* Sch 1 para 5(b). Subject to Sch 1 para 5, the scheduled works may only be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections: Sch 1 para 4(2).

6 *Ibid* Sch 1 para 4(1). For these purposes, 'maintain' includes inspect, repair, adjust, alter, remove, reconstruct and replace; and 'maintenance' is to be construed accordingly: Sch 1 para 1.

7 As to the placing and maintaining of apparatus in the street see *ibid* Sch 1 para 6(1).

8 *Ibid* Sch 1 para 4(3)(a).

9 *Ibid* Sch 1 para 4(3)(b). Note also the power, subject to limitations, to discharge water into any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works: see Sch 1 para 14.

10 *Ibid* Sch 1 para 4(3)(c).

11 Ibid Sch 1 para 4(3)(d). As to safeguarding works for buildings see also Sch 1 para 15. As to the disclosure of confidential information obtained on entering premises see Sch 1 para 40.

12 See ibid Sch 1 para 7.

13 See ibid Sch 1 para 8.

14 See ibid Sch 1 para 10.

15 See ibid Sch 1 para 11.

16 See ibid Sch 1 para 12.

17 See ibid Sch 1 para 9.

18 See ibid Sch 1 para 16.

UPDATE

305 Works powers

TEXT AND NOTES--SI 2006/1954 Sch 1 amended: SI 2008/2831, SI 2009/1307.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/ (ii) Power to Make Works under Ministerial Orders/A. IN GENERAL/306. Compulsory acquisition of land.

306. Compulsory acquisition of land.

An order under the Transport and Works Act 1992 as to railways¹ may make provision relating to the construction or operation of a transport system, and with respect to the construction and operation of a railway such provision may include the requisition of land, whether compulsorily or by agreement². Where compulsory acquisition powers are sought the provisions may include:

- 1069 (1) powers to acquire new rights³;
- 1070 (2) powers to acquire subsoil only⁴ (including rights under streets⁵);
- 1071 (3) temporary use of land for construction of works⁶;
- 1072 (4) temporary use of land for maintenance of works⁷; and
- 1073 (5) time limits for the exercise of powers of acquisition⁸.

The Model Clauses provide for Part I of the Compulsory Purchase Act 1965⁹, in so far as not modified by or inconsistent with the provisions of the order, to apply to the acquisition of land under that order¹⁰: (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981 applies¹¹; and (b) as if the order were a compulsory purchase order under that Act¹².

If the appropriate authority¹³ agrees, an interest which subsists in land in which there is a Crown or Duchy interest¹⁴, but is not itself a Crown or Duchy interest, may be acquired compulsorily by virtue of an order¹⁵, and any provision of the Transport and Works Act 1992 or of such an order (other than a provision by virtue of which an interest in land is compulsorily acquired) may apply in relation to land in which there is a Crown or Duchy interest¹⁶.

1 le an order under the Transport and Works Act 1992 s 1(1)(a) (see PARA 302 ante): see the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(a).

2 See *ibid* art 3(a), Sch 1 para 17. Provision may be made for differences to be referred to arbitration: see Sch 1 para 45. As to the provisions relating to statutory undertakers see Sch 1 para 41.

3 See *ibid* Sch 1 para 20. Provision is made for an undertaker to acquire only an easement or other right over land rather than any greater interest (such as a freehold or lease): see Sch 1 para 20. As to the extinction or suspension of private rights of way see Sch 1 para 29. As to the acquisition of part of certain properties see Sch 1 para 28.

4 See *ibid* Sch 1 paras 21, 22. The power would apply for example to the construction of a tunnel or the laying of underground cables.

5 See *ibid* Sch 1 para 23. This power does not apply in relation to any subway or underground building or any cellar, vault, arch or other construction in or on a street which forms part of a building fronting onto the street: see Sch 1 para 23(4).

6 See *ibid* Sch 1 para 24. The power extends to entering upon and taking temporary possession of the land, including removing any buildings and vegetation from the land and constructing temporary works (including the provision of means of access) and buildings on the land (see Sch 1 para 24(1)), but is subject to notification requirements (see Sch 1 para 24(2)), time limits for remaining in possession (see Sch 1 para 24(3)), restoration requirements (see Sch 1 para 24(4)) and compensation requirements (see Sch 1 para 24(5)-(7)). As to the service of notices see Sch 1 para 43. As to the assessment of compensation see Sch 1 para 27. As to double recovery of compensation see Sch 1 para 44.

7 See *ibid* Sch 1 para 25. The power does not extend to the undertaker taking temporary possession of: (1) any house or garden belonging to a house; or (2) any building (other than a house) if it is for the time being

occupied: see Sch 1 para 25(2). There are provisions as to notification (see Sch 1 para 25(3)), time limits for remaining in possession (see Sch 1 para 25(4)), restoration requirements (see Sch 1 para 25(5)) and compensation requirements (see Sch 1 para 25(6)-(8)).

8 Both compulsory purchase powers and the power to enter land for temporary use will cease at the end of the period of five years beginning on the day the order comes into force: see *ibid* Sch 1 para 30. The order came into force on 8 August 2006: see art 1.

9 *le* the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended) (see *COMPULSORY ACQUISITION OF LAND* vol 18 (2009) PARA 513 et seq): see the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 1 para 18(1).

10 *Ibid* Sch 1 para 18(1).

11 *Ibid* Sch 1 para 18(1)(a). As to the application of the Acquisition of Land Act 1981 see *COMPULSORY ACQUISITION OF LAND* vol 18 (2009) PARA 556 et seq.

12 Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 1 para 18(1)(b). As to special parliamentary procedure in connection with compulsory acquisition of land see PARA 313 post.

13 For these purposes, 'appropriate authority' means:

- 251 (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners (Transport and Works Act 1992 s 25(3)(a));
- 252 (2) in the case of other land belonging to Her Majesty in right of the Crown, the government department having the management of the land (s 25(3)(b));
- 253 (3) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy (s 25(3)(c));
- 254 (4) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints (s 25(3)(d)); and
- 255 (5) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department (s 25(3)(e)).

As to the Crown Estate Commissioners see *CROWN PROPERTY* vol 12(1) (Reissue) PARA 280 et seq. If any question arises as to what authority is the appropriate authority in relation to any land, that question must be referred to the Treasury, whose decision is final: s 25(4). As to the Treasury see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) PARAS 512-517. The functions of Ministers of the Crown under s 25, except that under s 25(4), are transferred so as to be exercisable in relation to Wales by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 35 ante.

14 For these purposes, 'Crown or Duchy interest' means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department: Transport and Works Act 1992 s 25(2).

15 *Ibid* s 25(1)(a). The text refers to an order under s 1 (see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 25(1)(a).

16 *Ibid* s 25(1)(b).

UPDATE

306 Compulsory acquisition of land

TEXT AND NOTES 1-12--SI 2006/1954 Sch 1 amended: SI 2008/2831, SI 2009/1307.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/ (ii) Power to Make Works under Ministerial Orders/B. PROCEDURE FOR MAKING ORDERS/307. Applications for orders.

B. PROCEDURE FOR MAKING ORDERS

307. Applications for orders.

The Secretary of State¹ may not make an order² except on an application made to him in accordance with rules made under the Transport and Works Act 1992³. The Secretary of State may make rules as to: (1) the form of such an application⁴; (2) the documents and information that must be submitted with it⁵; (3) the giving and publication of notices of an application⁶; (4) any other steps that must be taken before an application is made or in connection with the making of an application⁷. The power so to make rules includes power: (a) to make provision for or in connection with requiring the Secretary of State in such cases or circumstances as may be prescribed in the rules to give to a person who proposes to make an application⁸ an opinion on the information, if any, to be supplied in connection with that application⁹; and (b) to make rules as to the publicity to be given to any environmental information provided in relation to such an application¹⁰.

Any provision made by rules as to the consultation that must be carried out before an application is made¹¹, or as to the provision of information by a relevant authority¹² to a person for the purposes of an application which the person proposes to make, may include provision requiring compliance with general or special directions given by the Secretary of State¹³. Such rules may make different provision for different cases, and may include provision authorising the Secretary of State: (i) to dispense with compliance with rules that would otherwise apply¹⁴; or (ii) to require compliance with rules that would not otherwise apply, in any case where he considers it appropriate to do so¹⁵. Rules may also provide for fees of such amounts as may be determined by or in accordance with the rules to be payable to the Secretary of State on the making of such applications¹⁶.

Where the Secretary of State proposes to make an order otherwise than on application¹⁷, he must: (A) prepare a draft of the order¹⁸; (B) publish a notice of his intention to make the order, which notice must include such particulars as may be prescribed¹⁹, in the London Gazette and in a local newspaper circulating in the area (or each of the areas) in which the proposals contained in the draft order are intended to have effect²⁰; and (C) give such further notices of the proposal as may be prescribed²¹.

1 As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under the Transport and Works Act 1992 ss 6-7 (as amended), except the order-making function under s 7(1)(a) (see PARA 304 ante) and the rule-making functions under s 6(2)-(6) (as amended) (see the text and notes 3-16 infra) and under s 7(4) (see notes 3, 19 infra), are transferred so as to be exercisable in relation to Wales by the Welsh Ministers, and the functions under s 6 (as amended) and s 7(4) are subject to constraint: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 5, Schs 1, 2 (as amended); and PARA 35 ante.

2 Ie an order made under the Transport and Works Act 1992 s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 6(1). This prohibition is subject to s 7 (as amended) (orders made by the Secretary of State without application) (see PARA 304 ante): see s 6(1).

3 Ibid s 6(1). The text refers to rules made under s 6 (as amended): see s 6(1). The power to make provision by rules under s 6 (as amended) in relation to applications includes power to make such corresponding provision as the Secretary of State considers appropriate in relation to proposals to make orders by virtue of s 7 (as amended) (see PARA 304 ante): s 7(4). The power to make rules under s 6 (as amended) is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 6(6). In

exercise of his statutory powers, the Secretary of State has made the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, which deal with procedures for making applications for orders under the Transport and Works Act 1992 Pt I (ss 1-25) (as amended). In relation to orders made under the Transport and Works Act 1992 s 6 (as amended) see the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, rr 1-19, Schs 1-6; and, in relation to orders made by the Secretary of State under the Transport and Works Act 1992 s 7 (as amended) (see PARA 304 ante) see the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 20, Sch 7. As to the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, see further PARA 309 post. As to the powers of the Secretary of State in relation to applications under the Transport and Works Act 1992 s 6 (as amended) for orders under s 1 (see PARA 302 ante) see further s 7(4) (application of power to make rules under s 6 (as amended)); s 8 (model clauses) (see PARA 310 post); s 9 (as amended) (proposals which in the opinion of the Secretary of State are of national significance) (see PARA 317 post); s 10 (objections to an application under s 6 (as amended)) (see PARA 311 post); s 11 (as amended) (inquiries and hearings) (see PARA 312 post); s 13 (making or refusal of orders under s 1) (see PARA 314 post); s 14 (as amended) (notice of determination to applicants) (see PARA 314 post); s 15 (assimilation of procedures) (see PARA 316 post); and s 48 (as amended) (footpaths and bridleways over railways) (see PARA 359 post).

4 Ibid s 6(2)(a). As to the procedure to be followed in connection with listed buildings, conservation areas and ancient monuments see the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138; and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1111 et seq.

5 Transport and Works Act 1992 s 6(2)(b).

The power conferred on the Secretary of State by s 6(2) to make rules includes power to make rules for a case where an application has been made under s 6 (as amended) and another Member State is affected by the project in question, as to:

- 256 (1) the provision by the Secretary of State to the Member State (or to authorities in, or the public of, the Member State) of documents and information relating to the application (s 6A(1)(a) (s 6A added by the Transport and Works (Assessment of Environmental Effects) Regulations 1998, SI 1998/2226, reg 3));
- 257 (2) consultation by the Secretary of State with the Member State in connection with the application (Transport and Works Act 1992 s 6A(1)(b) (as so added)); or
- 258 (3) notification by the Secretary of State to the Member State of the decision, or of matters relating to the decision, on the application (s 6A(1)(c) (as so added)).

For these purposes, the cases where another Member State is affected by the project in question are those cases where it appears to the Secretary of State that the project would be likely to have significant effects on the environment in another Member State or where that other Member State is likely to be significantly affected by the project and requests information relating to the application: s 6A(2) (as so added). 'Member State' includes a state which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183); Transport and Works Act 1992 s 6A(3) (s 6A as so added; s 6A(3) added by the Transport and Works (Assessment of Environmental Effects) Regulations 2000, SI 2000/3199, reg 2). As to the rules so made see further see the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 16.

6 Transport and Works Act 1992 s 6(2)(c).

7 Ibid s 6(2)(d).

8 Ie under ibid s 6 (as amended): see s 6(2A) (as added: see note 9 infra).

9 Ibid s 6(2A) (added by the Transport and Works (Assessment of Environmental Effects) Regulations 1998, SI 1998/2226, regs 1(2), 2(a)).

10 Transport and Works Act 1992 s 6(2B) (added by the Transport and Works (Assessment of Environmental Effects) Regulations 2006, SI 2006/958, reg 2(1)).

11 As to preliminary consultation see PARA 309 post.

12 For these purposes, 'relevant authority' means any authority in relation to which Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L175, 5.7.85, p 40) art 5(4) (authorities holding relevant information to make it available to the developer) applies and includes Natural England, the Countryside Council for Wales, a local planning authority

within the meaning of the Town and Country Planning Act 1990 Pt I (ss 1-9) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28) and the Minister of Agriculture, Fisheries and Food: Transport and Works Act 1992 s 6(7) (added by the Transport and Works (Assessment of Environmental Effects) Regulations 1998, SI 1998/2226, reg 2(c); amended by the Natural Environment and Rural Communities Act 2006 s 105, Sch 11 Pt 1 para 136, Sch 12). As to Natural England and the Countryside Council for Wales see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARAS 523-524.

13 Transport and Works Act 1992 s 6(3) (amended by the Transport and Works (Assessment of Environmental Effects) Regulations 1998, SI 1998/2226, reg 2(b)). See *R (on the application of Prokopp) v London Underground Ltd* [2003] EWHC 960 (Admin), [2003] 19 EG 119 (CS), [2003] All ER (D) 26 (May) (private individual with sufficient *locus standi* could compel a local planning authority not to act unlawfully but could not, in a public law claim, obtain a permanent injunction, the effect of which was to take enforcement action that was the responsibility of the planning authority and which contained safeguards for the developer in the form of rights of appeal).

14 Transport and Works Act 1992 s 6(4)(a).

15 Ibid s 6(4)(b).

16 Ibid s 6(5). The text refers to the making of applications under s 6 (as amended): see s 6(5).

17 Ie by virtue of ibid s 7 (as amended) (see PARA 304 ante): see s 7(3).

18 Ibid s 7(3)(a).

19 The power to make provision by rules under ibid s 6 (as amended) in relation to applications includes power to make such corresponding provision as the Secretary of State considers appropriate in relation to proposals to make orders under s 7 (as amended): s 7(4). For these purposes, 'prescribed' means prescribed by rules under s 6 (as amended): s 7(4).

20 Ibid s 7(3)(b) (substituted by the Transport and Works (Assessment of Environmental Effects) Regulations 2006, SI 2006/958, reg 2(2)).

21 Transport and Works Act 1992 s 7(3)(c). As to the service of notices see PARA 308 post.

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308. Service of notices under the Transport and Works Act 1992.

A notice or other document required or authorised to be served¹ may be served by post². The proper address³ of any person in relation to the service on him of such a notice or document is, if he has given an address for service, that address⁴, and otherwise:

- 1074 (1) in the case of the secretary or clerk of a body corporate⁵, the registered or principal office of that body⁶; and
- 1075 (2) in any other case, his last known address at the time of service⁷.

Where, for the purposes of the Transport and Works Act 1992, a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable inquiry, the notice may be served by: (a) addressing it to him by name or by the description of 'owner', or as the case may be 'occupier', of the land (describing it)⁸; and (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on the land⁹.

The provisions as to the service of notices under the Transport and Works Act 1992¹⁰ do not exclude the employment of any method of service not expressly provided for by them¹¹.

1 Ie under the Transport and Works Act 1992: see s 66(1). The provisions of s 66 do not apply to anything required or authorised to be served under s 35 (as amended) (documentary evidence as to specimens) (see PARA 383 post): s 66(6).

2 Ibid s 66(1).

3 Ie for the purposes of the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) as it applies for the purposes of the Transport and Works Act 1992 s 66: see s 66(3).

4 Ibid s 66(3).

5 Where the person on whom a notice or other document to be served is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body: ibid s 66(2).

6 Ibid s 66(3)(a).

7 Ibid s 66(3)(b).

8 Ibid s 66(4)(a).

9 Ibid s 66(4)(b).

10 Ie ibid s 66: see s 66(5).

11 Ibid s 66(5).

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309. Applications and objections procedure.

Some of the procedural provisions applying to the deposit of a private Bill¹ dealing with the authorisation of a railway² are replicated, in a modified form, in the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006³ as well as important supplementary provisions dealing with: (1) preliminary procedure and consultation⁴; (2) the preparation of environmental statements⁵; (3) the application for the order including the deposit of a copy and publicity for the application⁶; and (4) information and notices including notice to other states likely to be affected⁷. The Rules also provide for the waiving of certain requirements⁸, for the Secretary of State to set later time limits⁹ and for objections and representations to be made and heard¹⁰.

1 As to the former authorisation procedure see PARA 291 ante. As to the procedure on the promotion of private Bills see PARLIAMENT vol 34 (Reissue) PARA 847.

2 Eg the deposit of plans, sections, books of reference and maps: see PARLIAMENT vol 34 (Reissue) PARA 847 et seq.

3 Ie the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466 (as to which see PARA 307 et seq ante).

4 See *ibid* rr 5, 8.

5 See *ibid* rr 6-7.

6 See *ibid* rr 9-14, Schs 1-3, 5-6. As to fees for applications see r 19, Sch 4; and as to the service of notices or documents see r 27.

7 See *ibid* rr 15-17. As to applications relating solely to Wales see r 28.

8 See *ibid* r 18. As to orders made by the Secretary of State under the Transport and Works Act 1992 s 7 (as amended) (see PARA 304 ante) see the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 20, Sch 7.

9 See *ibid* r 26.

10 See *ibid* rr 21-25.

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310. Model clauses.

The Secretary of State¹ may by order² prescribe model provisions³ for incorporation in any draft orders which, in accordance with rules made under the Transport and Works Act 1992⁴, may be required to be submitted with applications made thereunder⁵.

1 As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under the Transport and Works Act 1992 s 8 are subject to constraint by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 5, Schs 1, 2 (as amended); and PARA 35 ante.

2 The power to make orders is exercisable by statutory instrument: Transport and Works Act 1992 s 8(4). In exercise of his powers, the Secretary of State has made the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954 (see further PARAS 305-306 ante).

3 The prescribing of a model provision under the Transport and Works Act 1992 s 8 does not of itself make it mandatory for a provision in the terms of the model to be incorporated in a draft order or in any order eventually made by the Secretary of State under s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): s 8(3).

4 *Ie* under *ibid* s 6 (as amended) (see PARA 307 ante): see s 8(1).

5 *Ibid* s 8(1). The text refers to applications made under s 6 (as amended) (see PARA 307 ante): s 8(1). Different provisions may be prescribed under s 8 for different cases: s 8(2).

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311. Objections.

The Secretary of State¹ may make rules² as to:

- 1076 (1) the making of objections to an application for an order³ or to a proposal to make such an order otherwise than by application⁴;
- 1077 (2) the information to be comprised within or submitted with an objection⁵;
- 1078 (3) the submission by the person making the application of written representations or information in relation to objections⁶;
- 1079 (4) the submission of further written representations or information⁷;
- 1080 (5) such other matters relating to the consideration of objections as appear to the Secretary of State to be appropriate⁸.

The Secretary of State may not make a determination⁹ in respect of an order without first taking into consideration the grounds of any objection in respect of which rules under the Transport and Works Act 1992¹⁰ have been complied with¹¹. If an objection is withdrawn or appears to the Secretary of State to be frivolous or trivial¹², or to relate to matters which fall to be determined by a tribunal concerned with the assessment of compensation¹³, he may make a determination¹⁴ without further consideration of the objection¹⁵.

1 As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under the Transport and Works Act 1992 s 10, except the rule-making powers (see the text and notes 2-8 infra), are transferred so as to be exercisable in relation to Wales by the Welsh Ministers and made subject to constraint: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 5, Schs 1, 2 (as amended); and PARA 35 ante.

2 The power to make rules under the Transport and Works Act 1992 s 10 is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 10(6). Rules under s 10 may make different provision for different cases, and may include provision authorising the Secretary of State to dispense with compliance with rules that would otherwise apply, or to require compliance with rules that would not otherwise apply, in any case where he considers it appropriate to do so: s 10(5). In exercise of his statutory powers, the Secretary of State has made the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466 (as to which see PARA 307 et seq ante); in relation to objections and representations, see especially rr 21-25. See also PARA 309 ante.

3 I.e. an application under the Transport and Works Act 1992 s 6 (as amended) (see PARA 307 ante): s 10(1)(a).

4 Ibid s 10(1)(a). The text refers to an order made otherwise than by application by virtue of s 7 (as amended) (see PARA 304 ante): s 10(1)(a). Where a person makes an objection in accordance with rules made under s 10 to an application under s 6 (as amended) (see PARA 307 ante), the Secretary of State must send to that person a copy of any notice published pursuant to s 9(2): see s 9(3) (as amended); and PARA 317 post. Further, the Secretary of State may give to that person, and to a person who makes an objection to a proposal to make an order by virtue of s 7 (as amended), an opportunity of appearing before and being heard by a person appointed by the Secretary of State at a public local inquiry held under s 11 (as amended): see s 11(2); and PARA 312 post.

5 Ibid s 10(1)(b).

6 Ibid s 10(1)(c).

7 Ibid s 10(1)(d).

8 Ibid s 10(1)(e).

9 Ie a determination under ibid s 13(1) (see PARA 314 post): see s 10(2).

10 Ie rules made under ibid s 10: see s 10(2).

11 Ibid s 10(2). This provision is subject to s 10(3)-(6) (see s 10(2)) but it does not apply where the Secretary of State causes an inquiry to be held under s 11(1) (see PARA 312 post) or causes an objection to be dealt with in accordance with s 11(2) (see PARA 312 post) (s 10(4)). However, in such a case, the Secretary of State must not make a determination under s 13(1) (see PARA 314 post) without first taking into consideration the report of the person holding the inquiry or, as the case may be, of the person appointed under s 11(2) (see PARA 312 post): see s 10(4).

12 Ibid s 10(3)(a).

13 Ibid s 10(3)(b).

14 Ie under ibid s 13(1) (see PARA 314 post): see s 10(3).

15 Ibid s 10(3).

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312. Inquiries and hearings.

The Secretary of State¹ may cause a public local inquiry² to be held for the purposes of an application for an order³ or a proposal by the Secretary of State to make such an order otherwise than on application⁴. The Secretary of State may give to a person who makes an objection in accordance with rules made under the Transport and Works Act 1992⁵ an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose⁶.

Where an objection is made by a person⁷ who informs the Secretary of State in writing that he wishes the objection to be referred to an inquiry or to be given an opportunity of appearing before and being heard by a person appointed by the Secretary of State⁸, the Secretary of State must either cause an inquiry to be held or, if he so determines, give the objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State⁹.

There are prescribed rules relating to the procedure to be followed in such inquiries¹⁰ which cover the preliminary action to be taken by the Secretary of State¹¹ and by official bodies¹², the procedure where the Secretary of State causes a pre-inquiry meeting to be held¹³, the service of documents¹⁴, the arrangement of a timetable for the inquiry¹⁵, the appointment of an assessor¹⁶, the date and notification of an inquiry¹⁷, appearances at an inquiry¹⁸, representation of official bodies¹⁹, proofs of evidence²⁰, the procedure to be followed²¹, site inspections²² and notification of decisions²³.

1 As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under the Transport and Works Act 1992 s 11 are transferred so as to be exercisable in relation to Wales by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 35 ante.

2 The provisions of the Local Government Act 1972 s 250(2)-(5) (as amended) (attendance and evidence at, and costs of, inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) apply to an inquiry held under the Transport and Works Act 1992 s 11(1): s 11(5). However: (1) in its application by virtue of s 11(5), the Local Government Act 1972 s 250(4) (as amended) has effect with the omission of the words 'and any amount' onwards (Transport and Works Act 1992 s 11(5)(a)); and (2) the power to make an order as to costs under Local Government Act 1972 s 250(5) as applied by the Transport and Works Act 1992 s 11(5) is exercisable not only where the inquiry takes place but also where arrangements are made for it but it does not take place (s 11(5) (b)). As to the exclusion of s 10(2) where the Secretary of State causes an inquiry to be held under s 11(1) see PARA 311 ante. As to assimilation of procedures see PARA 316 post. As to public inquiries see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15 et seq.

3 I.e. an application under *ibid* s 6 (as amended) (see PARA 307 ante): s 11(1).

4 *Ibid* s 11(1). The text refers to an order made otherwise than on application by virtue of s 7 (as amended) (see PARA 304 ante): see s 11(1).

5 I.e. rules made under *ibid* s 10 (see PARA 311 ante): see s 11(2).

6 *Ibid* s 11(2). The Local Government Act 1972 s 250(4), (5) (as amended) (costs: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies in relation to proceedings under the Transport and Works Act 1992 s 11(2) as it applies in relation to an inquiry under s 11(1): s 11(6). As to the exclusion of s 10(2) (see PARA 311 ante) where the Secretary of State causes an objection to be dealt with in accordance with s 11(2) see PARA 311 ante.

7 I.e. a person within the meaning of *ibid* s 11(4) (as amended), namely: (1) any local authority for an area in which any works authorised by the proposed order are to be carried out (s 11(3), (4)(a)); and (2) where the

proposals include the compulsory acquisition of land, any person who, if the Acquisition of Land Act 1981 Pt II (ss 10-15) (as amended) (purchases by local and other authorities: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557 et seq) applied to the acquisition, would be entitled to a notice under s 12 (as amended) (notice to owners, lessees and occupiers: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 560) (Transport and Works Act 1992 s 11(3), (4)(b)). For these purposes, 'local authority' means a county council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a county borough council, and a Passenger Transport Executive: see s 11(4) (amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 34(1)). As to passenger transport areas, Authorities and Executives generally see PARA 63 ante. As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to London boroughs and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

The Secretary of State is required to send a copy of a notice required by the Transport and Works Act 1992 s 9(2) (see PARA 317 post) to every person within s 11(4) (as amended) who objected to an application in accordance with rules made under s 10 (see PARA 311 ante): see s 9(3) (as amended); and PARA 317 post.

8 le in accordance with *ibid* s 11(2) (see the text and notes 5-6 supra): see s 11(3).

9 *Ibid* s 11(3). This provision is subject to the application of s 10(3) (see PARA 311 ante): see s 11(3). As to the exclusion of s 10(2) (see PARA 311 ante) where the Secretary of State causes an objection to be dealt with in accordance with s 11(2) (see the text and notes 5-6 supra), and as to the prohibition on his making a determination under s 13(1) without first taking into consideration the report of the person appointed under s 11(2) see PARA 314 post. After making a determination under s 13(1), the Secretary of State must give notice of that determination to every person who made an objection which was referred to an inquiry or hearing in accordance with s 11(3): see s 14(1) (see PARA 314 post).

10 See the Transport and Works (Inquiries Procedure) Rules 2004, SI 2004/2018. In relation to any inquiry the procedures of which are prescribed by these rules, and especially regarding any references to government policy and government departments therein, see the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 6, Sch 4.

11 See the Transport and Works (Inquiries Procedure) Rules 2004, SI 2004/2018, r 4.

12 See *ibid* r 5.

13 See *ibid* rr 6, 8. Where the Secretary of State has caused a pre-inquiry meeting to be held in pursuance of r 6, provision is made for him to appoint a technical adviser (see r 11) and a mediator (see r 12).

14 See *ibid* rr 7, 24.

15 See *ibid* rr 9, 23.

16 See *ibid* r 10.

17 See *ibid* r 13.

18 See *ibid* r 14.

19 See *ibid* r 15.

20 See *ibid* r 16.

21 See *ibid* r 18. As to provision made for statements of common ground see r 17; and as to the procedure to be followed after an inquiry see r 20.

22 See *ibid* r 19.

23 See *ibid* r 21. As to the procedure following the quashing of a decision see r 22.

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313. Special parliamentary procedure.

An order under the Transport and Works Act 1992¹ authorising a compulsory purchase² is subject to special parliamentary procedure³ to the same extent as it would be by virtue of the Acquisition of Land Act 1981⁴ if the purchase were authorised by an order under that Act⁵. In relation to such an order under the Transport and Works Act 1992⁶ which is subject to special parliamentary procedure, there are certain statutory qualifications⁷.

1 le an order under the Transport and Works Act 1992 s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 12(1).

2 As to compulsory acquisition of land see PARA 306 ante.

3 le the procedure regulated by the Statutory Orders (Special Procedure) Act 1945 and the Statutory Orders (Special Procedure) Act 1965: see PARLIAMENT vol 34 (Reissue) PARA 918.

4 le by virtue of the Acquisition of Land Act 1981 s 18, Sch 3 para 5 (National Trust land) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 603 et seq) or s 19, Sch 3 para 6 (as amended) (Commons, open spaces etc) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 604 et seq): see the Transport and Works Act 1992 s 12(1).

5 See *ibid* s 12(1). The order referred to in the text is an order under the Acquisition of Land Act 1981 s 2(1) (order authorising a compulsory purchase: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557): see the Transport and Works Act 1992 s 12(1).

6 le an order under *ibid* s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 12(1).

7 See *ibid* s 12(3). In relation to an order which is subject to special parliamentary procedure: (1) s 13(5) (see PARA 314 post) does not apply (s 12(3)(a)); (2) s 22 (as amended) (validity: see PARA 318 post) does not apply if the order is confirmed by Act of Parliament under the Statutory Orders (Special Procedure) Act 1945 s 6 (see PARLIAMENT vol 34 (Reissue) PARAS 925-926) (Transport and Works Act 1992 s 12(3)(b)); and (3) in any other case, s 22(1) (as amended) (see PARA 318 post) has effect as if for the reference to the day on which the notice required by s 14(1)(b) (see PARA 314 post) is published there were substituted a reference to the day on which the order comes into operation under the Statutory Orders (Special Procedure) Act 1945 (Transport and Works Act 1992 s 12(3)(c)).

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314. Making or refusing orders.

Where an application has been made to the Secretary of State¹ for an order², or where the Secretary of State proposes to make an order otherwise than on application³, and (in either case) the relevant requirements of the Transport and Works Act 1992⁴ in relation to any objections have been satisfied, he must determine⁵:

- 1081 (1) to make an order⁶ which gives effect to the proposals concerned without modifications⁷;
- 1082 (2) to make an order which gives effect to those proposals with modifications⁸;
- or
- 1083 (3) not to make an order⁹.

Where an application has been made to the Secretary of State for an order¹⁰ and he considers that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order¹¹. The power of the Secretary of State to make such a determination includes power to make a determination in respect of some only of the proposals concerned, while making a separate determination in respect of, or deferring consideration of, others¹².

Where the Secretary of State proposes to make an order which gives effect to the proposals concerned with modifications which will in his opinion make a substantial change in the proposals: (a) he must notify any person who appears to him to be likely to be affected by the modifications¹³; (b) he must give that person an opportunity of making representations to him about the modifications within such period as he may specify in the notice¹⁴; and (c) he must before making the order consider any representations duly made to him¹⁵.

As soon as practicable after making such a determination¹⁶, the Secretary of State must give notice of the determination to the person (if any) who applied for the order¹⁷ and to every person who made an objection which was referred to an inquiry or hearing¹⁸, and publish a notice of the determination in the London Gazette¹⁹. The notice of a determination to make an order must give such particulars of the terms of the order as the Secretary of State considers appropriate, and in particular must state the name and address of the person who applied for the order²⁰.

Where a determination²¹ relates to relevant applications or proposals²² the notices must state that, before the Secretary of State made the determination²³: (i) he considered the environmental statement²⁴; (ii) he complied with any statutory obligations²⁵ in respect of any objection made in accordance with rules which relates to the environmental statement²⁶; and (iii) he considered (or referred to an inquiry²⁷ or to a person appointed²⁸) any representation duly made to him (other than an objection) which relates to the environmental statement²⁹.

Where the Secretary of State makes a determination³⁰, the appropriate person³¹ must publish a notice in a local newspaper circulating in the area, or in each of the areas, in which the relevant proposals³² are or were intended to have effect³³. As soon as practicable after the making of an order³⁴, the person who applied for the order³⁵ must: (A) deposit in the office of the Clerk of the Parliaments³⁶ a copy of the order, and of any plan or book of reference prepared in connection with the application (or proposed order)³⁷; and (B) deposit with each of the councils³⁸ in whose

area works authorised by the order are to be carried out a copy of each of those documents, or of so much of them as is relevant to those works³⁹. A council with which such documents are deposited must make them available for inspection free of charge at all reasonable hours⁴⁰.

1 As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under the Transport and Works Act 1992 s 13 and s 14 (as amended) are transferred so as to be exercisable in relation to Wales by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 35 ante.

2 Ie an application for an order under the Transport and Works Act 1992 s 6 (as amended) (see PARA 307 ante): see s 13(1).

3 Ie by virtue of *ibid* s 7 (as amended) (see PARA 304 ante): see s 13(1).

4 Ie the requirements of the Transport and Works Act 1992 ss 1-12 (as amended) (see PARAS 302 et seq ante, 317 post): see s 13(1).

5 *Ibid* s 13(1). See also, in relation to such determinations, s 10(2)-(4) (see PARA 311 ante) and s 14 (see the text and notes 16-40 *infra*).

6 Ie an order under *ibid* s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 13(1)(a). Except in relation to an order which is subject to special parliamentary procedure (see PARA 313 ante), such an order will come into operation on the date on which the notice required by s 14(1)(b) (see the text and note 19 *infra*) is first published, or on such later date, if any, as may be specified in the order s 13(5).

7 *Ibid* s 13(1)(a).

8 *Ibid* s 13(1)(b).

9 *Ibid* s 13(1)(c).

10 Ie an order under *ibid* s 6 (as amended) (see PARA 307 ante): see s 13(2).

11 *Ibid* s 13(2). This provision is without prejudice to s 13(3) (see the text and note 12 *infra*): see s 13(2).

12 *Ibid* s 13(3). Accordingly, the power to make an order under s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post) includes power to make two or more orders on the same application: s 13(3).

13 *Ibid* s 13(4)(a).

14 *Ibid* s 13(4)(b). As to the service of notices under the Transport and Works Act 1992 see PARA 308 ante.

15 *Ibid* s 13(4)(c).

16 Ie a determination under *ibid* s 13(1) (see the text and notes 1-9 *supra*): see s 14(1).

17 As to applications for orders see PARA 307 ante. As to objections to such orders see PARA 311 ante.

18 Transport and Works Act 1992 s 14(1)(a). The text refers to objections which were referred in accordance with s 11(3) (see PARA 312 ante): see s 14(1)(a). A notice under s 14(1)(a) must give the reasons for the determination and the considerations upon which it is based, give information about the public participation process, and give information regarding the right to challenge the validity of the determination and the procedures for doing so: s 14(2) (substituted by the Transport and Works (Assessment of Environmental Effects) Regulations 2006, SI 2006/958, reg 2(4)).

19 Transport and Works Act 1992 s 14(1)(b). A notice under s 14(1)(b) must state the terms of the determination, state that the notice under s 14(1)(a) (see the text and notes 16-18 *supra*) gives the information referred to in s 14(2) (as substituted) (see note 18 *supra*) and state where copies of the notice under s 14(1)(a) may be obtained: s 14(2A) (added by the Transport and Works (Assessment of Environmental Effects) Regulations 2006, SI 2006/958, reg 2(4)).

An order under the Transport and Works Act 1992 s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post) comes into operation on the date on which the notice required by s 14(1)(b) is first published or on such later date as may be specified in the order: see s 13(5); and note 6 *supra*. As to persons wishing to question the validity of any such order see PARA 318 post.

20 Ibid s 14(3). An exception is made where the order is made by virtue of s 7 (as amended) (see PARA 304 ante): s 14(3).

21 Ie a determination under ibid s 13(1) (see the text and notes 1-9 supra): see s 14(3A) (as added: see note 22 infra).

22 Ie to any application under ibid s 6 (as amended) (see PARA 307 ante) for an order or any proposal to make an order by virtue of s 7 (as amended) (see PARA 304 ante) where the order would authorise: (1) works or other projects in a class listed in Annex I to EC Council Directive 85/337 (OJ L 175, 5.7.85, p 40) (amended by EC Council Directive 97/11 (OJ L 73, 14.3.97, p 5)) on the assessment of the effects of certain public and private projects on the environment; or (2) works or other projects in a class listed in Annex II to EC Council Directive 85/337 (OJ L 175, 5.7.85, p 40) (as so amended) which are, by virtue of their nature, size or location, likely to have significant effects on the environment: Transport and Works Act 1992 s 14(3B) (s 14(3A)-(3D) added by the Transport and Works (Assessment of Environmental Effects) Regulations 1995, SI 1995/1541, reg 2; the Transport and Works Act 1992 s 14(3B) amended by the Transport and Works (Assessment of Environmental Effects) Regulations 1998, SI 1998/2226, reg 4(b)).

23 Transport and Works Act 1992 s 14(3A) (as added: see note 22 supra). The Secretary of State must send a copy of any notice to which the Transport and Works Act 1992 s 14(3A) (as added) applies to any person who made an objection to which head (ii) in the text refers, which was not referred to an inquiry or hearing in accordance with s 11(3) (see PARA 312 ante), or to any person who made a representation to which head (iii) in the text refers: see s 14(3C) (as so added). If, in a case where s 14(3A) (as added) has effect, an order is to be made, the notices under s 14(1) (see the text and notes 16-19 supra) must also contain a description of the main measures to avoid, reduce and, if possible, remedy the major adverse environmental effects: s 14(3AA) (added by the Transport and Works (Assessment of Environmental Effects) Regulations 1998, SI 1998/2226, reg 4(a)).

24 Transport and Works Act 1992 s 14(3A)(a) (as added: see note 22 supra). For these purposes, 'environmental statement' means a statement: (1) which is required by virtue of rules made under s 6 (as amended) (see PARA 307 ante) to accompany an application under that section for an order, or to be prepared in connection with the publication of a notice of a proposal to make an order by virtue of s 7 (as amended) (see PARA 304 ante); and (2) which sets out particulars of the likely impact on the environment of the implementation of the order applied for or proposed: s 14(3D) (as so added).

25 Ie under ibid s 10 (see PARA 311 ante): see s 14(3A)(b) (as added: see note 22 supra).

26 Ibid s 14(3A)(b) (as added: see note 22 supra).

27 Ie under ibid s 11(1) (see PARA 312 ante): see s 14(3A)(c) (as added: see note 22 supra).

28 Ie under ibid s 11(2) (see PARA 312 ante): see s 14(3A)(c) (as added: see note 22 supra).

29 See ibid s 14(3A)(c) (as added: see note 22 supra).

30 Ie a determination under ibid s 13(1) (see the text and notes 1-9 supra): see s 14(4) (as substituted: see note 33 infra).

31 For these purposes, in relation to an application for an order under ibid s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post), 'appropriate person' means the person who applied for the order and, in relation to a proposal to make an order by virtue of s 7 (as amended) (see PARA 304 ante), 'appropriate person' means the Secretary of State: s 14(4A) (added by the Transport and Works (Assessment of Environmental Effects) Regulations 2006, SI 2006/958, reg 2(5)).

32 For these purposes, in relation to an application for an order under the Transport and Works Act 1992 s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post), 'relevant proposals' means the proposals contained in the application and, in relation to a proposal to make an order by virtue of s 7 (as amended) (see PARA 304 ante), 'relevant proposals' means the proposals contained in the draft order prepared by the Secretary of State pursuant to s 7 (as amended): s 14(4A) (as added: see note 31 supra).

33 Ibid s 14(4) (substituted by the Transport and Works (Assessment of Environmental Effects) Regulations 2006, SI 2006/958, reg 2(5)). The notice referred to in the text must state the information referred to in the Transport and Works Act 1992 s 14(2A) (as added) (see note 19 supra): see s 14(4) (as so substituted).

34 Ie under ibid s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 14(5).

35 Ie or, where the order is made by virtue of ibid s 7 (as amended) (see PARA 304 ante), the Secretary of State: see s 14(5).

36 As to the Clerk of the Parliaments see PARLIAMENT vol 78 (2010) PARA 855.

37 Transport and Works Act 1992 s 14(5)(a). Where a plan or book of reference is revised before the order is made, the reference in head (A) in the text is to the latest version: s 14(6).

38 The councils are district councils, London borough councils and the Common Council of the City of London but are, in relation to Wales, county councils and county borough councils: *ibid* s 14(7) (amended by the Local Government (Wales) Act 1994, s 22(1), Sch 7 para 34(2)). As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to London boroughs and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

39 Transport and Works Act 1992 s 14(5)(b).

40 *Ibid* s 14(8).

UPDATE

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NOTE 22--Directive 85/337 Annexes I, II further amended: European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 114).

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315. Exercise of Secretary of State's functions by appointed person.

The Secretary of State¹ may by regulations prescribe classes of application which are to be dealt with by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State himself². The Secretary of State may if he thinks fit direct that an application which would otherwise fall to be determined by an appointed person is to be determined by the Secretary of State³. Regulations may provide for the giving of publicity to such directions⁴.

An order made on an application dealt with by an appointed person may not authorise the compulsory acquisition of land, or the compulsory creation or extinguishment of rights over land (including rights of navigation over water)⁵. However, subject to this qualification, a person so appointed has in relation to the application: (1) the same powers and duties as the Secretary of State has to make an order⁶; and (2) such other powers and duties conferred on the Secretary of State under or by virtue of Part I of the Transport and Works Act 1992⁷ as may be specified in the regulations⁸. Where an application has been dealt with by a person so appointed, any order made by him⁹ is to be treated as made by the Secretary of State¹⁰.

At any time before the appointed person has determined the application, the Secretary of State may: (a) revoke his appointment¹¹; and (b) appoint another person¹² to deal with the application instead¹³. Where such a new appointment is made, the consideration of the application must begin afresh, except to the extent that regulations provide otherwise¹⁴. If the Secretary of State exercises the power conferred on him under head (a) above, he must give reasons to the appointed person for revoking his appointment¹⁵.

Where the appointed person is an officer of the Department for Communities and Local Government, the Department for Transport, the Department for Business, Enterprise and Regulatory Reform or the Welsh Office, his functions are to be treated for the purposes of the Parliamentary Commissioner Act 1967¹⁶: (i) if he was appointed by the Secretary of State for the time being having general responsibility in transport matters in relation to England, as functions of the Department for Transport¹⁷; (ii) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of the Department for Communities and Local Government¹⁸; (iii) if he was appointed by the Secretary of State for the time being having general responsibility in energy matters, as functions of the Department for Business, Enterprise and Regulatory Reform¹⁹; (iv) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office²⁰.

1 As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under the Transport and Works Act 1992 s 23 (as amended) are transferred so as to be exercisable in relation to Wales by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 35 ante. However, the Transport and Works Act 1992 s 23(10) (as amended) (see the text and notes 16-20 infra) has effect with modifications, especially in relation to references to the Welsh Office and the Parliamentary Commissioner Act 1967: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

2 Transport and Works Act 1992 s 23(1). The power to make regulations under s 23 (as amended) is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 23(11). At the date at which this volume states the law, no such regulations had been made under this provision.

The Tribunals and Inquiries Act 1992 applies to a local inquiry or other hearing by a person appointed under the Transport and Works Act 1992 s 23 (as amended) as it applies to a statutory inquiry held by the Secretary of State, but as if in the Tribunals and Inquiries Act 1992 s 10(1) (statement of reasons for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person: Transport and Works Act 1992 s 23(9) (amended by the Tribunals, Courts and Enforcement Act 2007 s 48(1), Sch 8 paras 20, 22(1), (2)). Note, however, that the Tribunals and Inquiries Act 1992 s 10(1) refers to the Minister; and that 'Minister' includes any Board presided over by a Minister (see s 16(1)). A local inquiry or other hearing held by a person appointed under the Transport and Works Act 1992 s 23 (as amended) is also a statutory inquiry for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 44, Sch 7 (functions etc of Administrative Justice and Tribunals Council): see the Transport and Works Act 1992 s 23(9A) (added by the Tribunals, Courts and Enforcement Act 2007 Sch 8 paras 20, 22(1), (3)).

3 Transport and Works Act 1992 s 23(2).

4 Ibid s 23(8).

5 Ibid s 23(4).

6 Ibid s 23(3)(a). The text refers to an order under s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 23(3)(a).

7 Ie ibid ss 1-25, Sch 1 (as amended) (see PARA 302 et seq ante): see s 23(3)(b).

8 Ibid s 23(3)(b). For this purpose, any reference in any Act or instrument (including the Transport and Works Act 1992 and any instrument made under it) to the Secretary of State, or to anything done or authorised or required to be done by or to the Secretary of State, is to be construed, so far as the context permits and subject to regulations under s 23 (as amended), as a reference to the appointed person: see s 23(3).

9 Ie under ibid s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 23(5).

10 Ibid s 23(5).

11 Ibid s 23(6)(a).

12 Ie under ibid s 23(1) (see the text and notes 1-2 supra): see s 23(6)(b).

13 Ibid s 23(6)(b).

14 Ibid s 23(6). Such regulations may also provide for the giving of publicity to any appointment made: s 23(8).

15 Ibid s 23(7).

16 See ibid s 23(10) (amended by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 20(a); the Secretary of State for Communities and Local Government Order 2006, SI 2006/1926, art 9, Schedule para 6; and the Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007, SI 2007/3224, art 15, Schedule Pt 1 para 5). In relation to references to the Welsh Office and the Parliamentary Commissioner Act 1967 see note 1 supra. As to the Parliamentary Commissioner Act 1967 see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS.

17 Transport and Works Act 1992 s 23(10)(a) (substituted by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, Sch 2 para 20(b)).

18 Transport and Works Act 1992 s 23(10)(b) (substituted by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, Sch 2 para 20(b); the Transport and Works Act 1992 s 23(10)(b) amended by the Secretary of State for Communities and Local Government Order 2006, SI 2006/1926, Schedule para 6).

19 Transport and Works Act 1992 s 23(10)(c) (amended by the Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007, SI 2007/3224, Schedule Pt 1 para 5).

20 Transport and Works Act 1992 s 23(10)(d). In relation to references to the Welsh Office see note 1 supra.

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316. Assimilation of procedures.

Where an application is made for an order¹ relating to proposals for the purposes of which the giving of a consent, permission or licence under any enactment (or the making or confirmation of an order under any enactment) is required², the Secretary of State may make regulations for securing that, where that requirement would not be removed by the order to which the application relates³:

- 1084 (1) the procedure for obtaining, or otherwise relating to, the consent, permission, licence, order or confirmation⁴; and
- 1085 (2) the procedure relating to the application⁵,

are wholly or partly assimilated (and in particular that proceedings relating to the one may be held concurrently with proceedings relating to the other)⁶.

Such regulations may include provision excluding or modifying the application of any enactment⁷ or authorising the Secretary of State to give directions or take such other steps as may be appropriate for the purpose of securing the object of assimilation⁸.

¹ I.e. an application made under the Transport and Works Act 1992 s 6 (as amended) (see PARA 307 ante): see s 15(1).

² Ibid s 15(1). Section 15 applies to proposals by the Secretary of State to make orders by virtue of s 7 (as amended) (see PARA 304 ante) as it applies to applications under s 6 (as amended) (see PARA 307 ante): s 15(5). As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under s 15, except the regulation-making functions (see the text and note 3 infra), are transferred so as to be exercisable in relation to Wales by the Welsh Ministers and made subject to constraint: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 5, Schs 1, 2 (as amended); and PARA 35 ante.

³ Transport and Works Act 1992 s 15(2). The power to make regulations under s 15 is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 15(4). The following regulations have been made under s 15: the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138 (see also PARA 307 ante); and the Transport and Works Applications (Inland Waterways Procedure) Regulations 1993, SI 1993/1119 (see PARA 533 post).

⁴ Transport and Works Act 1992 s 15(2)(a).

⁵ Ibid s 15(2)(b). The text refers to the application made under s 6 (as amended) (see PARA 307 ante): see s 15(2)(b).

⁶ Ibid s 15(2).

⁷ Ibid s 15(3)(a).

⁸ Ibid s 15(3)(b). The object referred to in the text is that mentioned in s 15(2) (see the text and notes 3-6 supra): see s 15(3).

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C. SCHEMES OF NATIONAL SIGNIFICANCE

317. Schemes of national significance.

Where an application for an order¹ relates (wholly or in part) to proposals which in the opinion of the Secretary of State² are of national significance³, then, before the end of the period of 56 days beginning with the day on which he receives the application, the Secretary of State must publish in the London Gazette a notice identifying the application and the proposals which in his opinion are of national significance⁴.

On, or as soon as practicable after, the day on which such notice is published, the Secretary of State must:

- 1086 (1) publish a like notice in a local newspaper circulating in the area (or each of the areas) in which the proposals contained in the application are intended to have effect⁵; and
- 1087 (2) send a copy of the notice⁶ to the applicant and to those persons⁷ who objected to the application in accordance with rules made under the Transport and Works Act 1992⁸.

The Secretary of State must not make an order on the application unless each House of Parliament, on a motion moved by a Minister of the Crown which identifies the proposals referred to above, passes a resolution approving them at some time later than 56 days after the day of publication of the notice⁹. An order made on the application must not include any provision that is inconsistent with a proposal approved by such a resolution unless that provision gives effect to modifications of the proposal which have themselves been approved by a resolution of each House of Parliament passed on a motion moved by a Minister of the Crown¹⁰.

¹ ie an application made under the Transport and Works Act 1992 s 6 (as amended) (see PARA 307 ante); see s 9(1).

² As to the Secretary of State see PARA 35 ante. The functions of the Secretary of State under *ibid* s 9 (as amended) are exercisable by the Welsh Ministers concurrently with the Secretary of State, but the functions vested in a 'Minister of the Crown' under s 9(4), (5) (see the text and notes 9-10 *infra*) are not transferred: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended); and PARA 35 ante.

³ Transport and Works Act 1992 s 9(1). Section 9 (as amended) applies in relation to an order which the Secretary of State makes or proposes to make by virtue of s 7 (as amended) (see PARA 304 ante) as it applies in relation to an order for which an application is made to him, except that in such a case s 9(2), (3) (s 9(3) as amended) (see the text and notes 4-8 *infra*) does not apply, and s 9(4) (see the text and note 9 *infra*) applies as if the reference to the notice required by s 9(2) were a reference to the notice required by s 7(3) (as amended) (see PARA 307 ante) to be published in the London Gazette; and any proposals which in the opinion of the Secretary of State are of national significance must be identified as such in any notice required by or under s 7(3) (as amended): s 9(6).

⁴ *Ibid* s 9(2). As to the circumstances in which s 9(2) does not apply see note 3 *supra*.

5 Ibid s 9(3)(a) (substituted by the Transport and Works (Assessment of Environmental Effects) Regulations 2006, SI 2006/958, reg 2(3)). As to the circumstances in which the Transport and Works Act 1992 s 9(3) (as amended) does not apply see note 3 supra.

6 As to the service of notices see PARA 308 ante.

7 The persons within the meaning of the Transport and Works Act 1992 s 11(4) (as amended) (see PARA 312 ante): see s 9(3)(b).

8 Ibid s 9(3)(b). The text refers to the rules made under s 10 (see PARA 311 ante): see s 9(3)(b). As to the circumstances in which s 9(3) (as amended) does not apply see note 3 supra.

9 Ibid s 9(4). The text refers to the notice required by s 9(2) (see the text and note 4 supra): see s 9(4). See also notes 2, 3 supra.

10 Ibid s 9(5). See note 2 supra.

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D. VALIDITY OF ORDERS

318. Validity of orders.

If a person aggrieved by an order¹ desires to question the validity of it, or of any provision contained in it, on the ground²: (1) that it is not within the powers of the Transport and Works Act 1992³; or (2) that any requirement⁴ has not been complied with⁵, he may, within the period of 42 days beginning with the day on which the notice required by statute is published⁶, make an application for the purpose to the High Court⁷.

On any such application, the court:

1088 (a) may by interim order suspend the operation of the order (or of any provision contained in it) either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings⁸; and

1089 (b) if satisfied that the order or any provision contained in it is not within the powers of the Transport and Works Act 1992, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement as mentioned in head (2) above⁹, may quash the order or any provision contained in it, either generally or in so far as it affects any property of the applicant¹⁰.

Subject to these provisions¹¹, such an order¹² may not, either before or after it has been made, be questioned in any legal proceedings whatever¹³.

1 Ie an order under the Transport and Works Act 1992 s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 22(1).

2 Ibid s 22(1).

3 Ibid s 22(1)(a).

4 Ie any requirement imposed by or under the Transport and Works Act 1992 or the Tribunals and Inquiries Act 1992: see the Transport and Works Act 1992 s 22(1)(b) (amended by the Tribunals, Courts and Enforcement Act 2007 s 48(1), Sch 8 paras 20, 21).

5 Transport and Works Act 1992 s 22(1)(b) (as amended: see note 4 supra).

6 Ie the notice required under ibid s 14(1)(b) (see PARA 314 ante): s 22(1). As to orders which are subject to special parliamentary procedure see PARA 313 ante.

7 Ibid s 22(1).

8 Ibid s 22(2)(a).

9 Ie any requirement imposed by or under the Transport and Works Act 1992 or the Tribunals and Inquiries Act 1992: see the Transport and Works Act 1992 s 22(2)(b) (amended by the Tribunals, Courts and Enforcement Act 2007 Sch 8 paras 20, 21).

10 Transport and Works Act 1992 s 22(2)(b) (as amended: see note 9 supra).

11 Ie ibid s 22(1), (2) (as amended) (see the text and notes 1-10 supra): see s 22(3).

12 le an order under ibid s 1 (railways etc: see PARA 302 ante) or s 3 (inland waterways: see PARA 522 post): see s 22(3).

13 Ibid s 22(3).

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E. CONSIDERATIONS REQUIRED BY EUROPEAN LAW

319. Conservation of natural habitats.

The EC Council Directive on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive')¹ is implemented by the Conservation (Natural Habitats etc) Regulations 1994². Accordingly, in relation to orders sought under the Transport and Works Act 1992³, the provisions of that Act must be read in conjunction with the relevant provisions of the Conservation (Natural Habitats etc) Regulations 1994⁴.

1 The Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L206, 22.7.92, p 7) (as amended) as amended from time to time: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1) (definition substituted by SI 2007/1843); Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 3(1) (amended by SI 1997/3055).

2 As to the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, generally see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq.

3 See PARA 292 et seq ante.

4 The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 79-82 (see PARAS 320-323 post).

As to the assessment of implications for European sites see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48; and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748. For the meaning of 'European site' see regs 2(1), 10 (reg 10 as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729.

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320. Application of general requirements.

The requirement to consider the effect on a European site¹ applies in relation to the making of an order² under the Transport and Works Act 1992³. Where in such a case the Secretary of State⁴ considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by making modifications to the proposals, he may make an order subject to those modifications⁵.

The requirement to review existing decisions and consents⁶ applies to an order under the Transport and Works Act 1992 unless the works to which the order relates have been completed before the site became a European site⁷. Where, on the review of such an order, the Secretary of State considers that any adverse effects on the integrity of a European site of the carrying out (or, as the case may be, the continuation of the plan or project) would be avoided by a variation of the order, he may vary it accordingly⁸. In conjunction with the review of any such order, the Secretary of State must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it⁹.

1 I.e. the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 48-49 (as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748): see reg 79(1). For the meaning of 'European site' see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 10 (reg 10 as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729.

2 I.e. under the Transport and Works Act 1992 s 1: see PARA 302 et seq ante.

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 79(1).

4 As to the Secretary of State see PARA 35 ante.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 79(2).

6 I.e. ibid regs 50-51 (reg 50 as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748): see reg 79(3).

7 Ibid reg 79(3).

8 Ibid reg 79(4).

9 Ibid reg 79(5). As to directions deeming planning permission see PARA 302 note 3 ante.

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321. Procedure on review.

Where the Secretary of State¹ decides² to revoke or vary an order under the Transport and Works Act 1992 (or a direction deeming planning permission to be granted) he must serve notice³:

1090 (1) on the person (if any) on whose application the order was granted or, as the case may be, in whose favour the direction was made⁴; and

1091 (2) on any other person who in his opinion will be affected by the revocation or variation⁵,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to him⁶. The Secretary of State must also serve notice on: (a) the local planning authority⁷; and (b) the appropriate nature conservation body⁸, informing them of the decision and inviting their representations within the specified period⁹. The Secretary of State must consider whether to proceed with the revocation or variation, and must have regard to any representations so made to him¹⁰.

If, within the specified period, a person on whom notice was served under head (1) or head (2) above, or the local planning authority, so requires, the Secretary of State must, before deciding whether to proceed with the revocation or variation, give: (i) to them¹¹; and (ii) to any other person on whom notice under head (1), head (2), head (a) or head (b) above was required to be served¹², an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose¹³.

1 As to the Secretary of State see PARA 35 ante.

2 Ie in pursuance of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 79 (see PARA 320 ante): see reg 80(1).

3 Ibid reg 80(1).

4 Ibid reg 80(1)(a).

5 Ibid reg 80(1)(b).

6 Ibid reg 80(1).

7 Ibid reg 80(2)(a). For the meaning of 'local planning authority' see ibid reg 2(1); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 703.

8 Ibid reg 80(2)(b). For the meanings of 'appropriate nature conservation body' and 'nature conservation body' see ibid regs 2(1), 4 (reg 4 substituted by SI 2007/1843); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728.

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 80(2).

10 Ibid reg 80(3).

11 Ibid reg 80(4)(a).

12 Ibid reg 80(4)(b).

13 Ibid reg 80(4).

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322. Effect of review.

The revocation or variation¹ of an order under the Transport and Works Act 1992 (or of a direction deeming planning permission to be granted) takes effect upon service of the notices that are required² or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served³.

Where the Secretary of State⁴ decides not to proceed with the revocation or variation, the order or direction has effect again from the time of that decision, and thereafter has effect as if⁵:

- 1092 (1) any period specified in the order or direction for the taking of any action, being a period which had not expired prior to the date such order or direction was to have effect⁶, were extended by a period equal to that during which the revocation or variation had effect⁷; and
- 1093 (2) there were substituted for any date specified in the order or direction as being a date by which any action should be taken, not being a date falling prior to that date⁸, such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect⁹.

The revocation or variation¹⁰ of an order under the Transport and Works Act 1992 (or a direction deeming planning permission to be granted) does not affect anything done under the order or direction prior to the revocation or variation taking effect¹¹.

1 Ie pursuant to the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 79 (see PARA 320 ante): see reg 81(1).

2 Ie required by ibid reg 80(1) (see PARA 321 ante): see reg 81(1).

3 Ibid reg 81(1).

4 As to the Secretary of State see PARA 35 ante.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 81(2).

6 Ie the date mentioned in ibid reg 81(1) (see the text to notes 1-3 supra): see reg 81(2)(a).

7 Ibid reg 81(2)(a).

8 Ie the date mentioned in ibid reg 81(1) (see the text to notes 1-3 supra): see reg 81(2)(b).

9 Ibid reg 81(2)(b).

10 Ie pursuant to ibid reg 79 (see PARA 320 ante): see reg 81(3).

11 Ibid reg 81(3).

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323. Compensation for revocation or variation.

Where a direction deeming planning permission to be granted is revoked or varied¹, that permission is treated for the purposes of Part IV of the Town and Country Planning Act 1990² (which relates to compensation) as having been revoked or modified by order³.

Where an order under the Transport and Works Act 1992 is so revoked or so varied, Part IV of the Town and Country Planning Act 1990 applies as if⁴: (1) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under that Act⁵; and (2) Part IV of the Town and Country Planning Act 1990 provided that the Secretary of State⁶ was the person liable to pay any compensation provided for by Part IV of that Act⁷.

Where the Secretary of State decides not to proceed with the revocation or variation of an order under the Transport and Works Act 1992 (or a direction deeming planning permission to be granted) any claim for compensation by virtue of these provisions is limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect⁸ and the Secretary of State deciding not to proceed with it⁹.

Where compensation is payable by virtue of these provisions, the question as to the amount of the compensation is referred to and determined by the Lands Tribunal¹⁰, unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with¹¹.

1 Ie pursuant to the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 79 (see PARA 320 ante): see reg 82(1).

2 Ie the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 914 et seq): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 82(1).

3 Ibid reg 82(1). The order referred to in the text is an order under the Town and Country Planning Act 1990 s 97 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 541): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 82(1).

4 Ibid reg 82(2). However, reg 82(2) does not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of reg 82(1) (see the text and notes 1-3 supra): see reg 82(2).

5 Ibid reg 82(2)(a). The text refers to revocation or modification by order under the Town and Country Planning Act 1990 s 97 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 541): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 82(2)(a).

6 As to the Secretary of State see PARA 35 ante.

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 82(2)(b).

8 Ie taking effect under ibid reg 81(1) (see PARA 322 ante): see reg 82(3).

9 Ibid reg 82(3).

10 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

11 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 82(4). As to compensation under the Transport and Works Act 1992 itself for the compulsory acquisition of land see PARA 306 ante.

UPDATE

323 Compensation for revocation or variation

TEXT AND NOTES 10, 11--Reference to the Lands Tribunal is now to the Upper Tribunal: SI 1994/2716 reg 82(4) (amended by SI 2009/1307).

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F. NEW NETWORKS

(A) THE CHANNEL TUNNEL

324. The Channel Tunnel.

The Channel Tunnel has been constructed pursuant to powers contained in the Channel Tunnel Act 1987. The Act provides, inter alia, for the construction and operation of a railway tunnel system under the English Channel¹, and for associated works². It also provides for the incorporation of part of the railway tunnel system into the United Kingdom³, for the application and enforcement of law⁴ in relation to, and otherwise for the regulation⁵ of, the Channel Tunnel system, and for the construction of certain highways and associated works in the vicinity of Folkestone⁶. Various miscellaneous matters are also dealt with⁷.

The United Kingdom and French governments have granted to the two Eurotunnel companies jointly a concession to construct and operate the tunnel system⁸.

The Channel Tunnel is operated bi-nationally through the Channel Tunnel Intergovernmental Commission and the Channel Tunnel Safety Authority has responsibility for investigating safety-related incidents⁹.

¹ See the Channel Tunnel Act 1987 ss 1-4.

² See *ibid* ss 5-9, Schs 1-3 (s 9, Schs 2, 3 amended by the Countryside and Rights of Way Act 2000 Sch 8 para 1, Sch 10 para 6).

³ See the Channel Tunnel Act 1987 s 10. For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

⁴ See *ibid* ss 11-18. For the meaning of 'tunnel system' for these purposes see PARA 109 note 1 ante. For examples of application and enforcement of law in relation to the Channel Tunnel system see s 11 and orders made thereunder: the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167 (amended by SI 1993/1813; SI 1994/1405); the Channel Tunnel (Fire Services, Immigration and Prevention of Terrorism) Order 1990, SI 1990/2227 (amended by SI 1993/1813; SI 2004/3168; SI 2005/2929); the Channel Tunnel (Amendment of Agriculture, Fisheries and Food Import Legislation) Order 1990, SI 1990/2371 (amended by SI 1993/1331); the Channel Tunnel (Emergency Medical Services) (No 2) Order 1991, SI 1991/1236; the Channel Tunnel (Amendment of the Fisheries Act 1981) Order 1994, SI 1994/1390; the Channel Tunnel (Shop and Liquor Licensing Hours Requirements) (Disapplication) Order 1994, SI 1994/2478; the Channel Tunnel (Sunday Trading Act 1994) (Disapplication) Order 1994, SI 1994/3286; and the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2003, SI 2003/2758 (amended by SI 2004/1004). See also the Electricity Act 1989 (Consequential Modifications of Enactments) Order 1990, SI 1990/577.

As to provision for the application of international articles, enactments, criminal law and for the powers of police officers in relation to rail traffic, immigration controls and the policing of the Channel Tunnel, see the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813 (amended by the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7); SI 1994/1405; SI 1996/2283; SI 2000/913; SI 2000/1775; SI 2001/178; SI 2001/418; SI 2001/1544; SI 2001/3707; SI 2003/2799; SI 2005/3389; SI 2006/1003; SI 2006/2626; SI 2007/2907; SI 2007/3579); the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405 (amended by SI 2004/2589; SI 2006/2627; SI 2007/2908; SI 2007/3579); and the Channel Tunnel (International Arrangements) Order 2005, SI 2005/3207.

As to provisions for the security of the Channel Tunnel and of Channel Tunnel trains, see the Channel Tunnel (Security) Order 1994, SI 1994/570 (amended by the Northern Ireland (Emergency Provisions) Act 1996 s 63(7), Sch 7 Pt II; SI 2005/3389; SI 2006/2190), which creates certain offences against the safety of the system, including hijacking, destroying a Channel Tunnel train or the tunnel system and other acts endangering or likely

to endanger the safe operation of a Channel Tunnel train or the safety of the tunnel system, and makes provision for the protection of Channel Tunnel trains and the tunnel system against acts of violence. As to whether the Secretary of State had power unilaterally to impose requirements for the defence and security of the tunnel except in the circumstances set out in the 1986 Treaty under which the two countries had agreed to permit the construction of the tunnel (the fixed link) see *R (on the application of Channel Tunnel Group Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 1185, (2001) Times, 7 August, [2001] All ER (D) 300 (Jul).

5 See the Channel Tunnel Act 1987 ss 19-34 (s 22 prospectively repealed by the Transport Act 2000 s 274, Sch 31 Pt IV, the Channel Tunnel Act 1987 s 30 repealed by the Local Government Finance (Miscellaneous Amendments and Repeal) Order 1990, SI 1990/1285, art 3, the Channel Tunnel Act 1987 s 32 substituted by the Communications Act 2003 s 406(1), Sch 17 para 84).

6 See the Channel Tunnel Act 1987 ss 35-36, Sch 4.

7 See *ibid* ss 37-50, Schs 5-7 (s 39 prospectively repealed, ss 40, 42 repealed, by the Transport Act 2000 Sch 31 Pt IV). The Channel Tunnel Act 1987 s 43, Sch 6 para 2 (as amended) (disapplication of enactments in the case of Concessionaires and through service operators), Sch 6 para 3 (as amended) (extension of enactments in relation to through service operators) and Sch 6 para 4 (modification of enactments applying to Concessionaires and through service operators) apply to international groupings and railway undertakings, other than the Concessionaires and the British Railways Board, in relation to the provision of international services in exercise of access or transit rights under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 who are not through service operators (within the meaning of the Channel Tunnel Act 1987 Sch 6 (as amended)) as they apply to those who are: see the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 34; and PARA 109 note 1 ante.

As to the construction, operation and maintenance of the Channel Tunnel Rail Link (a high speed railway between St Pancras in London and Folkestone in Kent) see the Channel Tunnel Rail Link Act 1996. See also the Channel Tunnel Rail Link (Nomination) Order 1999, SI 1999/391 (amended by SI 2003/2306; SI 2003/2834; SI 2007/2920) and the Channel Tunnel Rail Link (Nomination) (London Underground Works) Order 1999, SI 1999/1985 (amended by SI 1999/2198), made under the Channel Tunnel Act 1987 s 34 (amended by the Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003, SI 2003/1398, art 2, Schedule para 6(1), (3)) which nominate an undertaker for the purposes of certain of the provisions of the Channel Tunnel Rail Link Act 1996 Pt I (ss 1-43) (as amended). As to development authorised by the Channel Tunnel Rail Link Act 1996 see the Channel Tunnel Rail Link (Assessment of Environmental Effects) Regulations 1999, SI 1999/107. As to the use of land in connection with certain works in respect of the Channel Tunnel Rail Link see the Channel Tunnel Rail Link (Thames Tunnel Approach) Order 2002, SI 2002/1943.

8 EC Council Directive 91/440 (OJ L237, 24.8.91, p 25) (as amended) (see PARA 30 et seq ante) is applied to the Channel Tunnel by means of a bi-national regulation.

9 See PARA 273 et seq ante.

UPDATE

324 The Channel Tunnel

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Channel Tunnel Act 1987 s 11 amended: SI 2009/1941. SI 2005/3207 amended: SI 2008/2366, SI 2009/2081. SI 1994/570 further amended: SI 2009/1307.

NOTE 7--SI 1999/391 replaced: Channel Tunnel Rail Link (Nomination) Order 2008, SI 2008/3076. See also the Cross-border Railway Services (Working Time) Regulations 2008, SI 2008/1660.

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(B) CROSSRAIL

325. Crossrail.

At the date at which this volume states the law, the Crossrail Bill was still before Parliament, its intention being to secure the powers necessary to build new rail tunnels running west-east through central London ('Crossrail') and a number of new purpose-built stations¹. The provisions of the Bill, and the legislative framework that it seeks to establish, are similar to those adopted for the purposes of constructing the Channel Tunnel pursuant to powers contained in the Channel Tunnel Act 1987².

¹ See the Crossrail Bill (2007-08), which is a hybrid Bill (as to which see PARLIAMENT vol 34 (Reissue) PARA 839 et seq).

² As to which see PARA 324 ante.

UPDATE

325 Crossrail

TEXT AND NOTES--The Crossrail Act 2008 received the royal assent on 22 July 2008 and came into force on that day. The Crossrail Act 2008 provides for the construction and operation of a railway transport system running from Maidenhead and Heathrow Airport through central London to Shenfield and Abbey Wood. Specific provision is made in relation to (1) works associated with the construction of Crossrail (see ss 1-4, Schs 1-4); (2) temporary possession, use and compulsory acquisition of land, extinguishment of rights in relation to land, and planning controls to ensure that land can be used for Crossrail and for its construction (see ss 5-19, Schs 5-10 (Sch 6 amended by SI 2009/1307); Crossrail (Fees for Requests for Planning Approval) Regulations 2008, SI 2008/2175; Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations 2008, SI 2008/2908 (amended by SI 2009/1312)); (3) noise control (see Crossrail Act 2008 ss 20, 21); (4) railway matters concerning to the operation of Crossrail (see ss 22-39, Schs 11-13; Crossrail (Nomination) Order 2008, SI 2008/2036); and (5) various miscellaneous matters (see Crossrail Act 2008 ss 40-57, Schs 14-17 (Sch 17 amended by SI 2009/2748)).

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(iii) Accommodation Works

A. IN GENERAL

326. Obligation to make or maintain accommodation works.

A railway undertaker¹ must make and maintain for the accommodation of the owners² and occupiers of lands³ adjoining the railway⁴ all works necessary for the purposes of: (1) communication between severed lands⁵; (2) the separation of lands taken from adjoining lands not taken⁶; and (3) proper drains and watering places⁷. The works must be planned to meet the needs of both the owners and the occupiers⁸. If the owner releases the undertaker, or is paid compensation in lieu of the accommodation works being made⁹, the rights of a tenant in occupation at the date of the release or payment are not affected¹⁰, nor are the rights of his successors in title¹¹. However, if the owner subsequently negotiates a new tenancy and the former occupation ends, the undertaker is not liable to the new occupier¹². Where an occupier subsequently becomes the owner of the lands, his rights as occupier remain unless there has been a merger of the interest which conferred on him his right of occupation¹³.

1 In the Railways Clauses Consolidation Act 1845, the undertaker is the company or party authorised by the special Act (see PARA 291 ante) to construct the railway; and 'railway' in a special Act means the railway and works authorised by the special Act to be constructed: see the Railways Clauses Consolidation Act 1845 s 3. However, any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. As to the position where the special Act was passed before the Railways Clauses Consolidation Act 1845 see *Short v British Railways Board* [1974] 3 All ER 28, [1974] 1 WLR 781. For the meaning of 'special Act' see PARA 291 note 2 ante.

In practice, the railway undertaker now refers to either: (1) Network Rail in respect of those railways authorised pursuant to a special Act and which vested in that company pursuant to the terms of the transfer scheme (see PARA 5 ante); or (2) the promoter of an order under the Transport and Works Act 1992 procedure (see PARA 302 ante). The provisions of the Railways Clauses Consolidation Act 1845 ss 68, 71, 72 (amongst others) are usually incorporated into orders made under the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954: see art 3(a), Sch 1 para 2(1); and PARA 310 ante.

2 Where under the provisions of the Railways Clauses Consolidation Act 1845 or the special Act any notice is required to be given to the owner of any lands, or where any act is authorised or required to be done with the consent of any owner, the word 'owner' means any person or corporation who, under the provisions of the Railways Clauses Consolidation Act 1845 or the special Act, or any Act incorporated therewith, would be enabled to sell and convey lands to the railway undertakers: Railways Clauses Consolidation Act 1845 s 3.

3 For these purposes, 'lands' includes messuages, lands, tenements and hereditaments, of any tenure: *ibid* s 3.

4 The duty is owed only to owners or occupiers of adjoining land: *Greenhalgh v British Railways Board* [1969] 2 QB 286, [1969] 2 All ER 114, CA. See also *Freemans plc v Park Street Properties (Lincoln) Ltd* [2002] EWHC 477 (TCC), [2002] All ER (D) 408 (Mar) (no justification for the implication into the Railways Clauses Consolidation Act 1845 of a provision to the effect that the right under s 68 should cease to exist in the event that the relevant railway and land having the benefit of accommodation works come into the same ownership). There is no reason to construe the reference to 'railway' in the Railways Clauses Consolidation Act 1845 s 68 in such a way that where different railway companies constructed adjacent lines, each did not potentially owe the other obligations of the kind for which s 68 provided: see *Freemans plc v Park Street Properties (Lincoln) Ltd* *supra* (per curiam).

5 See the Railways Clauses Consolidation Act 1845 s 68; and PARAS 333-336 post.

6 See *ibid* s 68; and PARAS 337-338 post. See also *R Walker & Son (a firm) v British Railways Board* [1984] 2 All ER 249, [1984] 1 WLR 805 (duty to maintain accommodation works ceases if the purpose of the particular accommodation work has become extinct; but obligation not terminated merely by reason of the abandonment of the railway, the removal of track and equipment and the sale of the railway land to the county council).

7 See the Railways Clauses Consolidation Act 1845 s 68; and PARAS 339-340 post.

8 See *Lanarkshire and Dumbartonshire Rly Co v Main* (1894) 21 R 1018 at 1021, Ct of Sess.

9 See the Railways Clauses Consolidation Act 1845 s 68 proviso; and PARA 329 post.

10 *Corry v Great Western Rly Co* (1881) 7 QBD 322, CA.

11 See *Tudor v Great Western Rly Co* [1948] 1 KB 465, [1947] 2 All ER 768, CA.

12 See *Tudor v Great Western Rly Co* [1948] 1 KB 465, [1947] 2 All ER 768, CA; cf *Corry v Great Western Rly Co* (1881) 7 QBD 322, CA.

13 This would seem to be the position: see *Symons v Southern Rly Co* (1935) 153 LT 98, CA, as explained in *Tudor v Great Western Rly Co* [1948] 1 KB 465 at 471-472, [1947] 2 All ER 768 at 771-772, CA, per Somervell LJ.

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327. Land required for accommodation works.

Land required for the purposes of accommodation works¹ is land required for the purpose of the railway, whether the undertaker is required or merely empowered to construct the works². In deciding what land is so required, the court will not interfere with the undertaker's discretion, provided the undertaker acts in good faith³. A work which is intended for a purpose other than the needs of the adjoining owners⁴ and occupiers may not be an accommodation work⁵.

1 As to accommodation works generally see PARA 326 ante.

2 See *Lord Beauchamp v Great Western Rly Co* (1868) 3 Ch App 745; *Wilkinson v Hull etc Rly and Dock Co* (1882) 20 ChD 323, CA.

3 *Stockton and Darlington Rly Co v Brown* (1860) 9 HL Cas 246 at 256; *Lord Beauchamp v Great Western Rly Co* (1868) 3 Ch App 745; *Wilkinson v Hull etc Rly and Dock Co* (1882) 20 ChD 323, CA. See also *Caledonian Rly Co v Gardiner* (1873) 1 R 271, Ct of Sess.

4 I.e. as required by the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante.

5 Eg a bridge constructed to carry a railway over the railway being constructed for the purpose of conveying traffic, not only to the property of the owner of the severed land but also to the property of other persons, is not an accommodation work: *Rhondda and Swansea Rly Co v Talbot* [1897] 2 Ch 131, CA.

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328. Remedy for non-performance.

A railway undertaker¹ may be compelled by judgment for specific performance² to carry out accommodation works³ which it has agreed to carry out⁴, whether the agreement was made in consideration of the withdrawal of opposition to a Bill in Parliament⁵ or as part of the consideration for the conveyance of land taken⁶. An undertaker may also be compelled to perform personal services covenanted to be performed in connection with the accommodation works⁷.

1 As to railway undertakers see PARA 326 note 1 ante.

2 As to the remedy of specific performance see generally SPECIFIC PERFORMANCE.

3 Ie under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante.

4 *Wilson v Furness Rly Co* (1869) LR 9 Eq 28. See also *Storer v Great Western Rly Co* (1842) 2 Y & C Ch Cas 48. Where an agreement was made but not carried out and a further agreement was made for the payment of such sum as should be approved by A in satisfaction of the original agreement but A died without approving any sum, it was held that specific performance of the original agreement could be granted but not of the second agreement: *Firth v Midland Rly Co* (1875) LR 20 Eq 100. See also *Powell v South Wales Rly Co* (1855) 1 Jur NS 773. Where works are constructed otherwise than according to the undertaker's obligation, an injunction will not be granted to compel the undertaker to alter the works when the plaintiff stands by and does not act with reasonable promptitude: *Wintle v Bristol and South Wales Union Rly Co* (1862) 6 LT 20.

5 *Raphael v Thames Valley Rly Co* (1867) 2 Ch App 147, where it was held that it is no answer to a claim for specific performance of such an agreement that the carrying out of the agreement would inconvenience the public by delaying the opening, or temporarily suspending the working of the railway. See, however, PARA 329 post.

6 *Sanderson v Cockermouth and Workington Rly Co* (1850) 2 H & Tw 327; *Edinburgh and Glasgow Rly Co v Campbell* (1863) 9 LT 157, HL. See also PARA 329 post. Where works are to be made under an agreement which does not refer to the undertaker's special Act, specific performance may be granted of works which are more extensive than the special Act requires: *Clarke v Manchester, Sheffield and Lincolnshire Rly Co* (1861) 1 John & H 631.

7 Thus, where an undertaker covenanted to make and maintain certain crossings connecting a timber property with a wharf and to convey timber across the railway to the wharf, it was held that specific performance would be granted of the covenant for the personal service of conveyance: *Fortescue v Lostwithiel and Fowey Rly Co* [1894] 3 Ch 621. Such a covenant is binding on another undertaker to whom the first undertaking has been transferred by Act of Parliament subject to the obligations and liabilities of the old undertakers: see *Fortescue v Lostwithiel and Fowey Rly Co* supra. See also *Earl of Jersey v Great Western Rly Co* [1894] 3 Ch 625n, CA.

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329. When accommodation works need not be constructed.

A railway undertaker¹ is not required to construct accommodation works² in such a way as would prevent or obstruct the working of the railway³ or where it has agreed with the owners⁴ and occupiers of the land⁵ to pay and has paid compensation instead of making such works⁶. Nevertheless, even where compensation has been paid this exemption may be excluded by an express covenant in the conveyance requiring the undertaker to construct and maintain certain works⁷. The undertaker may agree with the owners how and when the works are to be constructed⁸.

1 As to railway undertakers see PARA 326 note 1 ante.

2 Ie under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante.

3 For the meaning of 'railway' see PARA 326 note 1 ante.

4 For the meaning of 'owner' see PARA 326 note 2 ante.

5 As to the meaning of 'lands' see PARA 326 note 3 ante.

6 Railways Clauses Consolidation Act 1845 s 68 proviso. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

An owner or occupier who accepts compensation has no remedy against the undertaker for not constructing and maintaining works: *Corry v Great Western Rly Co* (1881) 7 QBD 322, CA. But see *Lawrence v Great Northern Rly Co* (1851) 16 QB 643, where compensation paid and works completed under an agreement for arbitration were held not to cover damage arising afterwards from works in another place which could not have been foreseen by the arbitrator.

7 *Dawson v Railway Executive* (1951) 101 L Jo 541.

8 *Sanderson v Cockermouth and Workington Rly Co* (1850) 2 H & Tw 327; *Rhondda and Swansea Rly Co v Talbot* [1897] 2 Ch 131, CA; *South Eastern Rly Co v Associated Portland Cement Manufacturers (1900) Ltd* [1910] 1 Ch 12, CA.

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330. Additional works by adjoining owners.

If any of the owners¹ or occupiers of lands² affected by a railway³ consider that the accommodation works made⁴ or directed to be made⁵ by the railway undertaker⁶ are insufficient for the commodious use of their lands, then at any time and at their own expense they may make such further works for that purpose as they think necessary and as are agreed to by the undertaker or, in the case of difference, authorised by two justices⁷. However, if the undertaker so desires, the works must be constructed under the superintendence of the undertaker's engineer and according to plans and specifications approved by him, but the undertaker is not entitled to require the execution of works which would involve a greater expense than that incurred by it in similar cases⁸.

1 For the meaning of 'owner' see PARA 326 note 2 ante.

2 As to the meaning of 'lands' see PARA 326 note 3 ante.

3 For the meaning of 'railway' see PARA 326 note 1 ante.

4 Ie under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante.

5 Ie under ibid s 69: see PARA 331 post.

6 As to railway undertakers see PARA 326 note 1 ante.

7 Railways Clauses Consolidation Act 1845 s 71. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

Proceedings under the Railways Clauses Consolidation Act 1845 s 71 may only be brought where the accommodation works made by the undertaker are insufficient according to the state of things at the time of the construction of the works: *Rhondda and Swansea Rly Co v Talbot* [1897] 2 Ch 131, CA. An owner or occupier who has contracted out of his right to have works (see PARA 210 ante) may not proceed under this provision: *Rhondda and Swansea Rly Co v Talbot* supra. See also *Corry v Great Western Rly Co* (1881) 7 QBD 322, CA; *South Eastern Rly Co v Associated Portland Cement Manufacturers (1900) Ltd* [1910] 1 Ch 12, CA.

8 Railways Clauses Consolidation Act 1845 s 72. See note 7 supra.

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331. Settlement of differences.

Any difference which arises as to the kind, number, dimensions, sufficiency or maintenance of accommodation works¹ must be determined by two justices, who must also appoint the time within which the works must be commenced and executed by the railway undertaker².

If the undertaker fails to commence the works ordered within 14 days of the time appointed or fails to proceed diligently with the works in a sufficient manner, the aggrieved party may himself execute the works and recover the expenses reasonably incurred by him from the undertaker³. However, no person may obstruct or injure the railway⁴ or the works connected with it for a longer time, or use them in any other manner, than is unavoidably necessary for the execution or repair of the accommodation works⁵.

1 The works constructed under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante.

2 Ibid s 69. As to railway undertakers see PARA 326 note 1 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

Justices may only order accommodation works taking into account the existing, not the prospective, use of the land: *R v Brown* (1867) LR 2 QB 630. See also *R v Fisher* (1862) 3 B & S 191. The jurisdiction of the justices extends to a dispute between the undertakers and an occupier (*Lanarkshire and Dumbartonshire Rly Co v Main* (1894) 21 R 1018, Ct of Sess), but not to the question whether there should be any accommodation works at all (*R v Waterford and Limerick Rly Co* (1852) 2 ICLR 580). The High Court will not assume jurisdiction over questions within the justices' jurisdiction: see *Hood v North Eastern Rly Co* (1870) LR 11 Eq 116; cf *Sanderson v Cockermouth and Workington Rly Co* (1850) 2 H & Tw 327.

3 Railways Clauses Consolidation Act 1845 s 70. Any dispute as to expenses must be settled by two justices: s 70. See note 2 supra. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

4 For the meaning of 'railway' see PARA 326 note 1 ante.

5 Railways Clauses Consolidation Act 1845 s 70. See note 2 supra.

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332. Limitation of time for requiring works.

After the expiration of five years from the completion of the accommodation works¹ and the opening of the railway² for public use or of such other period as may be prescribed³, the railway undertaker⁴ cannot be compelled to make any further or additional⁵ accommodation works for the use of owners⁶ and occupiers of lands⁷ adjoining the railway⁸.

However, there is no limit to the time within which the original obligation to make accommodation works may be enforced⁹, and damages may be recovered for injury resulting from the undertaker's failure to provide accommodation works forthwith¹⁰.

1 The works constructed under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante.

2 For the meaning of 'railway' see PARA 326 note 1 ante.

3 For these purposes, 'prescribed' is construed to refer to such matter as is prescribed or provided for in the special Act; and the sentence in which such word occurs is to be construed as if instead of the word 'prescribed' the expression 'prescribed for that purpose in the special Act' had been used: see the Railways Clauses Consolidation Act 1845 s 2. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

4 As to railway undertakers see PARA 326 note 1 ante.

5 The Railways Clauses Consolidation Act 1845 s 73 only applies where works are demanded which are additional to works already constructed: *Dixon v Great Western Rly Co* [1897] 1 QB 300, CA.

6 For the meaning of 'owner' see PARA 326 note 2 ante.

7 As to the meaning of 'lands' see PARA 326 note 3 ante.

8 Railways Clauses Consolidation Act 1845 s 73. Where a culvert was made in 1853 and injury was caused to land by flooding some 25 years later, it was held that no action would lie in respect of the inefficient construction of the culvert because no complaint had been brought within the five years, and the relevant statutory provisions had been complied with at the time of the execution of the works: *Colley v London and North Western Rly Co* (1880) 5 Ex D 277, followed in *Ryan v Great Southern and Western Rly Co* (1892) 32 LR Ir 15, distinguishing *Corry v Great Western Rly Co* (1881) 7 QBD 322, CA. However, where a bridge was built over a brook in 1847 under the powers of the special Act and flooding of the plaintiff's land occurred in 1899 owing to its improper construction, it was held that the bridge was not an accommodation work, that the principle of *Colley v London and North Western Rly Co* supra did not apply and that the plaintiff was entitled to damages: *Ferrand v Midland Rly Co* (1901) 17 TLR 427.

9 *Dixon v Great Western Rly Co* [1897] 1 QB 300, CA; *Moynihan v Tralee and Dingle Rly Co* (1907) 41 ILT 165.

10 *Great North of Scotland Rly Co v Duke of Fife* (1900) 82 LT 425, HL; *Pollock v North British Rly Co* (1901) 3 F 727, Ct of Sess.

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B. COMMUNICATION BETWEEN SEVERED LAND

333. Gates, bridges, etc.

The accommodation works which a railway undertaker¹ is required to make and maintain² include such and so many convenient gates³, bridges, approaches⁴, arches, culverts and passages over, under or by the sides of or leading to or from a railway⁵ as are necessary⁶ for the purpose of making good any interruptions caused by the railway to the use of the lands⁷ through which it is made⁸. The works must be made forthwith after the part of the railway passing over the lands in question has been laid or formed or during its formation⁹.

1 As to railway undertakers see PARA 326 note 1 ante.

2 I.e. under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

3 As to accommodation gates and crossings and the statutory and common law obligations in relation to them see PARA 352 et seq post.

4 As to approaches see *Addie's Trustees v Caledonian Rly Co* (1906) 8 F 1047, Ct of Sess; *TRH Sampson Associates Ltd v British Railways Board* [1983] 1 All ER 257, [1983] 1 WLR 170.

5 For the meaning of 'railway' see PARA 326 note 1 ante.

6 'Necessary', in the Railways Clauses Consolidation Act 1845 s 68, refers to the obligation to make good the interruption, and does not confine the undertaker to any particular way of carrying out the accommodation works: *Wilkinson v Hull etc Rly and Dock Co* (1882) 20 ChD 323, CA. See also *Great Western Rly Co v Talbot* [1902] 2 Ch 759, CA; *Addie's Trustees v Caledonian Rly Co* (1906) 8 F 1047, Ct of Sess; *Summerlee and Mossend Iron and Steel Co Ltd v Caledonian Rly Co* 1909 SC 536, Ct of Sess.

7 As to the meaning of 'lands' see PARA 326 note 3 ante.

8 Railways Clauses Consolidation Act 1845 s 68. See note 2 supra.

9 Ibid s 68. See note 2 supra.

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334. Right of way over railway crossings.

Where a piece of land is severed by a railway from other land belonging to the same person¹, the owner has a right of way over the crossing or other communication which corresponds with the actual or immediately contemplated use of the land at the time it was taken². However, he is not entitled to use the crossing so as to increase substantially the burden of the easement by altering or enlarging its character³.

The right of way is destroyed by a sale of one of the severed pieces of land to a purchaser who does not buy the remainder of the land and to whom the right of way is not assigned by the conveyance⁴. However, the right of way may be dedicated as a public right of way⁵.

1 Where the severed piece of land is less than half an acre, in certain circumstances the undertaker can require the owner to sell the land to the undertaker: see the Lands Clauses Consolidation Act 1845 s 94; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 630.

2 *Great Northern Rly Co v M'Alister* [1897] 1 IR 587 at 602, 1r CA, per Fitzgibbon LJ.

3 *Great Western Rly Co v Talbot* [1902] 2 Ch 759, CA; approving *Great Northern Rly Co v M'Alister* [1897] 1 IR 587, 1r CA (see the text and notes 1-2 supra). See also *Neath Canal Co v Ynisarwed Resolven Colliery Co* (1875) 10 Ch App 450; *Taff Vale Rly Co v Gordon Canning* [1909] 2 Ch 48. However, by the terms of its special Act an undertaker may be obliged to make and maintain crossings with regard to the use of the land not only when the railway is constructed but also when the land becomes used as building land: *United Land Co v Great Eastern Rly Co* (1875) 10 Ch App 586. See also *Finch v Great Western Rly Co* (1879) 5 Ex D 254. Where an undertaker grants a general right of way for all purposes, and not merely an 'accommodation way' under the Railways Clauses Consolidation Act 1845 s 68, the user is not restricted to that which prevailed at the time of the grant: *South Eastern Rly Co v Cooper* [1924] 1 Ch 211, CA. See also *British Railways Board v Glass* [1965] Ch 538, [1964] 3 All ER 418, CA.

4 *Midland Rly Co v Gribble* [1895] 2 Ch 827, CA.

5 *British Transport Commission v Westmorland County Council* [1958] AC 126, [1957] 2 All ER 353, HL. The test to be applied is whether such dedication is compatible with the statutory purposes for which the land was acquired: *British Transport Commission v Westmorland County Council* supra.

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335. Extent of obligation to make accommodation crossings.

A railway undertaker¹ need only provide accommodation crossings and communications² with reference to the use of the land at the time the railway is constructed, and is not bound to consider any prospective or different use³. Thus, a tribunal valuing agricultural land as prospective building land may estimate the damage to such land by severance without regard to the undertaker's obligation to construct a crossing which could only be ordered with reference to the existing use of the land and would be useless as access to building land⁴.

1 As to railway undertakers see PARA 326 note 1 ante.

2 I.e. under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

3 *R v Brown* (1867) LR 2 QB 630; *Rhondda and Swansea Rly Co v Talbot* [1897] 2 Ch 131, CA.

4 *R v Brown* (1867) LR 2 QB 630.

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336. Rights pending execution of the works.

Until the railway undertaker¹ has made the required crossings or communications² between lands³ intersected by the railway⁴, the owners⁵ and occupiers of those lands and any other person whose right of way is affected by the lack of communication, and their respective employees, are entitled, with carriages, horses and other animals, freely to cross the part of the railway where it intersects their lands for the sole purpose of occupying the lands or exercising their right of way⁶. However, in so crossing the railway they must not damage it or obstruct the passage along it⁷, and the right to cross does not extend to an owner or occupier who has received or agreed to receive compensation from the undertaker in lieu of the provision of communications⁸.

1 As to railway undertakers see PARA 326 note 1 ante.

2 I.e. required by the special Act or by the Railways Clauses Consolidation Act 1845: see s 74. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

3 As to the meaning of 'lands' see PARA 326 note 3 ante.

4 For the meaning of 'railway' see PARA 326 note 1 ante.

5 For the meaning of 'owner' see PARA 326 note 2 ante.

6 Railways Clauses Consolidation Act 1845 s 74.

7 Ibid s 74. See note 2 supra.

8 Ibid s 74. See note 2 supra. An owner of land who has received compensation on the basis of total severance without communications has no right to cross the railway, and is a trespasser if he does so: *Manning v Eastern Counties Rly Co* (1843) 12 M & W 237. As to trespass see PARAS 407-411 post.

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C. SEPARATION OF ADJOINING LANDS

337. Fences, gates and stiles.

The obligation of a railway undertaker¹ to make and maintain accommodation works² includes the obligation to make and maintain³ sufficient posts, rails, hedges, ditches, mounds or other fences for separating the land⁴ taken for the use of the railway⁵ from the adjoining lands not taken and for protecting the adjoining lands from trespass, or the cattle⁶ of the owners⁷ and occupiers of those lands from straying, by reason of the railway⁸. The undertaker is also required to provide all necessary gates, opening towards the adjoining lands, and all necessary stiles⁹. Posts, rails and other fences must be made as soon after the taking of the lands as the owners may require and the other works as soon as is conveniently possible¹⁰.

1 As to railway undertakers see PARA 326 note 1 ante.

2 I.e. under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

3 The obligation is not only to erect but to maintain for all time: *Page v Great Eastern Rly Co* (1871) 24 LT 585; *Dixon v Great Western Rly Co* [1897] 1 QB 300, CA. See also *R Walker & Son (a firm) v British Railways Board* [1984] 2 All ER 249, [1984] 1 WLR 805.

4 As to the meaning of 'lands' see PARA 326 note 3 ante.

5 For the meaning of 'railway' see PARA 326 note 1 ante.

6 Cattle includes pigs, and so a fence which is sufficient as against horses, cows and sheep but not as against pigs is not a sufficient fence: *Child v Hearn* (1874) LR 9 Exch 176.

7 For the meaning of 'owner' see PARA 207 note 2 ante.

8 Railways Clauses Consolidation Act 1845 s 68. See note 2 supra. The fences, gates (see the text and note 9 infra) and like works must be sufficient to contain cattle (*Page v Great Eastern Rly Co* (1871) 24 LT 585) and to prevent them from wandering on the line from the adjoining land (*Bessant v Great Western Rly Co* (1860) 8 CBNS 368). The fence must be strong enough to prevent cattle from straying in normal circumstances: *Cooper v Railway Executive (Southern Region)* [1953] 1 All ER 477, [1953] 1 WLR 223. Where cattle stray on to the line from adjoining land because of a defect in a fence which the undertaker is bound to maintain, the undertaker is liable for any consequential damage (*Sharrod v London and North Western Rly Co* (1849) 4 Exch 580), although liability may be reduced by reason of contributory negligence.

9 Railways Clauses Consolidation Act 1845 s 68. See note 2 supra. See also *Sharrod v London and North Western Rly Co* (1849) 4 Exch 580; *Manchester, Sheffield and Lincolnshire Rly Co v Wallis* (1854) 14 CB 213; *Bessant v Great Western Rly Co* (1860) 8 CBNS 368; *Page v Great Eastern Rly Co* (1871) 24 LT 585; *Cooper v Railway Executive (Southern Region)* [1953] 1 All ER 477, [1953] 1 WLR 223.

10 Railways Clauses Consolidation Act 1845 s 68. See note 2 supra.

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338. Nature of obligation to fence.

The statutory obligation to fence¹ binds the railway undertaker² to the same extent as if it was bound to fence by prescription at common law³. However, the obligation is owed solely to the owners⁴ or occupiers of land⁵ adjoining land taken by the undertaker and to no other person⁶, except in the case of level crossings at highways⁷. Nevertheless, the undertaker's duty extends to licensees of the occupiers⁸, as the Railways Clauses Consolidation Act 1845 is for the benefit of all persons lawfully using the adjoining land⁹, although there is no obligation to fence one part of the undertaker's own land from another¹⁰, except where necessary for the protection of persons lawfully using the land¹¹. Where the land taken adjoins a highway, the undertaker is under a duty to fence the railway against the cattle of persons lawfully using the highway¹² but not against cattle unlawfully straying onto it¹³.

An undertaker may be discharged from its obligation to fence by the payment of compensation to owners and occupiers¹⁴.

1 le under the Railways Clauses Consolidation Act 1845 s 68: see PARA 337 ante. However, any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

For a discussion of the purposes for which fencing is to be constructed see *R Walker & Son (a firm) v British Railways Board* [1984] 2 All ER 249, [1984] 1 WLR 805.

2 As to railway undertakers see PARA 326 note 1 ante.

3 *Ricketts v East and West India Docks and Birmingham Junction Rly Co* (1852) 12 CB 160; *Manchester, Sheffield and Lincolnshire Rly Co v Wallis* (1854) 14 CB 213; *Wiseman v Booker* (1878) 3 CPD 184.

4 For the meaning of 'owner' see PARA 326 note 2 ante.

5 As to the meaning of 'lands' see PARA 326 note 3 ante.

6 *Ricketts v East and West India Docks and Birmingham Junction Rly Co* (1852) 12 CB 160; *Buxton v North Eastern Rly Co* (1868) LR 3 QB 549. Thus the obligation to fence under the Railways Clauses Consolidation Act 1845 has nothing to do with the undertaker's duty to its passengers: *Buxton v North Eastern Rly Co* supra at 554. An undertaker's duty is towards persons not on railway land to prevent them or their cattle from entering or straying upon the line; it is not towards passengers or others already on the line: *Harrold v Great Western Rly Co* (1866) 14 LT 440.

7 See the Railways Clauses Consolidation Act 1845 s 47 (as amended), s 61 (both cited in PARA 355 post).

8 *Dawson v Midland Rly Co* (1872) LR 8 Exch 8.

9 *Dawson v Midland Rly Co* (1872) LR 8 Exch 8 at 9.

10 *Roberts v Great Western Rly Co* (1858) 4 CBNS 506.

11 *Marfell v South Wales Rly Co* (1860) 8 CBNS 525. An undertaker is not bound to fence the foreshore: *Greer v Belfast and County Down Rly Co* [1926] NI 68, NI CA. Where cattle stray from one piece of land to another, both adjoining the railway, and thus cause damage, the undertaker is liable: *Moynihan v Great Southern Rlys Co* [1935] IR 132.

12 *Midland Rly Co v Daykin* (1855) 17 CB 126. Persons lawfully driving cattle on the highway are occupiers of the highway within the meaning of the Railways Clauses Consolidation Act 1845: *Midland Rly Co v Daykin* supra. As to the duty with regard to gates at level crossings see PARA 352 et seq post.

13 *Manchester, Sheffield and Lincolnshire Rly Co v Wallis* (1854) 14 CB 213. See also *Ricketts v East and West India Docks and Birmingham Junction Rly Co* (1852) 12 CB 160; *Luscombe v Great Western Rly Co* [1899] 2 QB 313, DC; *Parkinson v Garstang and Knott End Rly Co* [1910] 1 KB 615, DC.

14 See the Railways Clauses Consolidation Act 1845 s 68 proviso; and PARA 329 ante. See note 1 supra.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iii) Accommodation Works/D. WORKS TO CARRY AWAY WATER/339. Works to carry away water.

D. WORKS TO CARRY AWAY WATER

339. Works to carry away water.

In accordance with its obligation to provide accommodation works¹, a railway undertaker² is required to make and maintain all necessary arches, tunnels, culverts, drains or other passages, either over, under or by the sides of the railway³, of such dimensions as are sufficient at all times to convey the water as clearly from the lands⁴ lying near or affected by the railway as before the railway was made, or as nearly so as possible⁵. These works must be carried out from time to time as the railway works proceed⁶.

1 le under the Railways Clauses Consolidation Act 1845 s 68: see PARA 337 ante. However, any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

2 As to railway undertakers see PARA 326 note 1 ante.

3 For the meaning of 'railway' see PARA 326 note 1 ante.

4 As to the meaning of 'lands' see PARA 326 note 3 ante.

5 See the Railways Clauses Consolidation Act 1845 s 68. See note 1 supra.

6 See *ibid* s 68. See note 1 supra. The drains to be provided and maintained are those required at the time the land is taken for the railway and not at some later date when the land may be put to different use: *R v Fisher* (1862) 3 B & S 191. All drains provided are vested in, and remain under the control and management of, the undertaker, and other parties are to be restrained from connecting sewers and drains with them: *London and North Western Rly v Runcorn RDC* [1898] 1 Ch 561, CA. In *Powell v South Wales Rly Co* (1855) 1 Jur NS 773, the undertakers were ordered to construct an agreed drain.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iii) Accommodation Works/D. WORKS TO CARRY AWAY WATER/340. Watering places.

340. Watering places.

A railway undertaker¹ is required² to make and maintain proper watering places for cattle³ where by reason of the railway⁴ the cattle of any person occupying lands⁵ lying near the railway are deprived of access to their former watering places⁶. The watering places must be made so as to be at all times as sufficiently supplied with water as before and as if the railway had not been made⁷. An undertaker must make all necessary watercourses and drains for the purpose of carrying water to the watering places⁸.

1 As to railway undertakers see PARA 326 note 1 ante.

2 Ie under the Railways Clauses Consolidation Act 1845 s 68: see PARA 337 ante. However, any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

3 Compare the meaning of 'cattle' in PARA 337 note 6 ante.

4 For the meaning of 'railway' see PARA 326 note 1 ante.

5 As to the meaning of 'lands' see PARA 326 note 3 ante.

6 See the Railways Clauses Consolidation Act 1845 s 68; and see note 2 supra.

The court will not order more to be done than s 68 requires: *York and North Midland Rly Co v Milner* (1846) 15 LJQB 379, Ex Ch.

7 See the Railways Clauses Consolidation Act 1845 s 68. The supply must be at least 'as nearly as may be' as before the construction of the railway: see s 68. See note 2 supra.

Where an undertaker covenanted in the conveyance of land for the railway 'to procure a supply of water as good as the supply cut off', it was held that the covenant referred to one act only, namely such an act as in the ordinary course would secure a continuous supply, and not to a series of acts by which the undertaker would have to secure a supply forever: *Re Gray and Metropolitan Rly Co* (1881) 44 LT 567.

8 See the Railways Clauses Consolidation Act 1845 s 68. See note 2 supra.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iii) Accommodation Works/E. MISCELLANEOUS WORKS/341. Work for the purposes of avoiding danger or preventing accident.

E. MISCELLANEOUS WORKS

341. Work for the purposes of avoiding danger or preventing accident.

If any tree standing near a railway¹ is in danger of falling on the railway so as to obstruct the traffic, the railway company² may make a complaint to and obtain an order from two justices that the tree be removed or otherwise dealt with³. The justices may award compensation to the owner of the tree⁴.

Railway companies have power to enter upon any lands adjoining their railway for the purpose of repairing or preventing any accident or slip happening (or being apprehended) to any cutting, embankment or other work belonging to them⁵.

1 For these purposes, 'railway' means the whole or any portion of a railway or tramway, whether worked by steam or otherwise: Regulation of Railways Act 1868 s 2.

2 For these purposes, 'company' means a company incorporated, either before or after the passing of the Regulation of Railways Act 1868 (ie 31 July 1868), for the purpose of constructing, maintaining or working a railway in the United Kingdom (either alone or in conjunction with any other purpose) or any person having the management of a railway or a train for the time being, and includes, except when otherwise expressed, any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom or parties to an agreement for working a railway in the United Kingdom: s 2 (amended by the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, art 2, Schedule para 3). For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

3 See the Regulation of Railways Act 1868 s 24.

4 See *ibid* s 24. Compensation is recoverable in the same way as under the Railways Clauses Consolidation Act 1845: see PARA 423 post.

5 See the Railway Regulation Act 1842 s 14 (amended by the Statute Law Revision (No 2) Act 1890). As to circumstances where public safety requires additional land to be taken compulsorily by any railway company for such purposes see the Railway Regulation Act 1842 s 15.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iii) Accommodation Works/E. MISCELLANEOUS WORKS/342. Milestones.

342. Milestones.

A railway undertaker¹ must cause the length of the railway² to be measured and milestones, posts or other conspicuous objects to be set up and maintained along the whole length of the line, at intervals of a quarter of a mile, and marked so as to show the distances³.

Any person who wilfully pulls down a milestone is liable to a fine in respect of each offence⁴.

1 As to railway undertakers see PARA 326 note 1 ante.

2 For the meaning of 'railway' see PARA 326 note 1 ante.

3 Railways Clauses Consolidation Act 1845 s 94. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

4 See *ibid* s 95 (as amended); and PARA 387 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iv) Other Works/A. REPAIRS/343. Damage to roads.

(iv) Other Works

A. REPAIRS

343. Damage to roads.

A railway undertaker¹ who, in the course of making a railway², uses or interferes with any road must from time to time make good all damage done by it to the road³. Any question as to the damage or its repair must be referred to two justices, who may direct such repairs to be made in the state of the road in respect of the damage done by the undertaker and within such period as they think reasonable⁴.

1 As to railway undertakers see PARA 326 note 1 ante.

2 For the meaning of 'railway' see PARA 326 note 1 ante.

3 See the Railways Clauses Consolidation Act 1845 s 58 (amended by the Justices of the Peace Act 1949 s 46(2), Sch 7 Pt III). Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

The undertaker is also liable for damage caused by contractors carrying materials over the roads for the purpose of making the railway: *West Riding and Grimsby Rly Co v Wakefield Local Board of Health* (1864) 5 B & S 478. However, in *Re Exeter and Crediton Rly Co, ex p Exeter Roads Trustees* (1852) 16 Jur 669, where an undertaker, under its special Act, demolished a county bridge, thus relieving the county of its duty to repair the approaches to the bridge, it was held that the undertaker had not interfered with the road and therefore could not be compelled under the Railways Clauses Consolidation Act 1845 s 58 (as amended) to repair it.

4 Ibid s 58 (as amended: see note 3 supra). It is sufficient for the order to specify the length of the road damaged and to order the undertaker to make repairs: *London and North Western Rly Co v Wetherall* (1851) 20 LJQB 337. In determining the question the justices must have regard to and make full allowance for any tolls paid by the undertaker in connection with its use of the road: Railways Clauses Consolidation Act 1845 s 58 (as so amended). If the undertaker fails to carry out such repairs, the justices may impose a maximum penalty of £5 a day: see s 58 (as so amended). See note 3 supra.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iv) Other Works/A. REPAIRS/344. Repair of works.

344. Repair of works.

Where a railway undertaker¹ is required by statute² to maintain or keep in repair any bridge, fence, approach, gate or other work executed by it, two justices, on complaint being made to them that any such work is out of repair³, may order the undertaker to put the work into complete repair within a specified period⁴. An undertaker who fails to comply with such an order is liable to a specified penalty⁵ in respect of each day it fails to carry out the repairs, and the justices⁶ may order the whole or any part of the penalties paid to be applied, in such manner and by such persons as they think fit, in putting the work into repair⁷.

1 As to railway undertakers see PARA 326 note 1 ante.

2 Ie by its special Act (see PARA 291 ante) or by the application of the Railways Clauses Consolidation Act 1845 (see PARA 326 note 1 ante): see s 65. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

See also *Bristol and Exeter Rly Co v Tucker* (1862) 13 CBNS 207, where it was held that a special Act which incorporated the Railways Clauses Consolidation Act 1845 so far as it related to the mode of crossing roads and the construction of bridges incorporated s 65. Where a special Act provides a different, complete remedy, s 65 does not operate, although if the remedy under the special Act is subsequently dispensed with by the legislature, the remedy under the Railways Clauses Consolidation Act 1845 revives: *London, Chatham and Dover Rly Co v Wandsworth Board of Works* (1873) LR 8 CP 185. Where liability to repair is imposed under a special Act passed before the Railways Clauses Consolidation Act 1845, s 65 does not apply: *Taff Vale Rly Co v Davies* (1868) 19 LT 278; and see also PARA 291 ante.

3 The complaint may be made by the appropriate highway authority (as successor to the surveyor of roads: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq), or by any two householders of the parish or district in which the work is situated: Railways Clauses Consolidation Act 1845 s 65. See note 2 supra.

4 Ibid s 65. The undertaker must first be given ten days' notice of the complaint: s 65. See note 2 supra.

5 If the undertaker fails to comply with such an order it is liable to a fine of £5 per day: ibid s 65. See note 2 supra.

6 Ie the justices who imposed the penalty: see ibid s 65. See note 2 supra.

7 Ibid s 65. See note 2 supra.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iv) Other Works/B. BRIDGES/345. Railway lines crossing highways.

B. BRIDGES

345. Railway lines crossing highways.

If the line of a railway¹ crosses any public highway², then either the highway must be carried over the railway, or the railway over the highway³ by means of a bridge⁴. Any such bridge, together with the immediate approaches and all other necessary connected works, must be executed and maintained at the expense of the railway undertaker⁵.

1 For the meaning of 'railway' see PARA 326 note 1 ante.

2 The Railways Clauses Consolidation Act 1845 s 46 refers to 'any turnpike road or public highway', but turnpike roads (on which tolls were levied) no longer exist as such: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 23.

3 Unless otherwise provided in its special Act, a railway undertaker has an option with which the courts will not interfere, with the result that a mandatory order (formerly an order of mandamus) will not be granted to do either unless it is impossible to do the other: *R v Directors etc of South Eastern Rly Co* (1853) 4 HL Cas 471. For the meaning of 'special Act' see PARA 291 note 2 ante. As to the grant of a mandatory order (formerly an order of mandamus) to enforce statutory rights and duties generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

4 Railways Clauses Consolidation Act 1845 s 46. The bridge must be constructed as provided for by the special Act or the Railways Clauses Consolidation Act 1845 (see s 46); or as provided by an order made under the Transport and Works Act 1992 (see PARA 302 ante). Certain bridges are also regulated by the provisions of the Transport Act 1968: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 882-886. As to requirements under the Railways Clauses Consolidation Act 1845 see PARAS 346-351 post.

It should be noted that the Railways Clauses Consolidation Act 1845 s 46 (as amended) (amongst others) is normally incorporated into orders made under the Transport and Works Act 1992: see the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(a), Sch 1 para 2(1); and PARA 310 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante.

5 Ibid s 46. See note 4 supra. As to railway undertakers see PARA 326 note 1 ante. However, the responsibility for maintaining bridges carrying highways over the railways of Railtrack plc now lies with the appropriate highway authorities and such bridges are maintainable at public expense: see the Transport Act 1968 s 116 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 882.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iv) Other Works/B. BRIDGES/346. Bridges carrying railways over roads.

346. Bridges carrying railways over roads.

Every bridge which is erected for the purpose of carrying a railway¹ over a road must be built in conformity with the following regulations: (1) the width of the arch must be such as to leave a clear space under it of not less than 35 feet if the arch is over a road which was at the date of the passing of the special Act a turnpike road², of 25 feet if over a public carriage road and of 12 feet if over a private road³; (2) the clear height of the arch from the surface of the road must be not less than 16 feet for a space of 12 feet if over a road which was a turnpike road, 15 feet for a space of 10 feet if over a public carriage road⁴, and not less than 14 feet for a space of 9 feet over a private carriage road⁵.

1 For the meaning of 'railway' see PARA 326 note 1 ante.

2 Turnpike roads no longer exist as such: see PARA 345 note 2 ante.

3 Railways Clauses Consolidation Act 1845 s 49. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

The Railways Clauses Consolidation Act 1845 s 13 provides that, where it is intended to construct a railway on an arch or arches or other viaduct, as marked on the plan and section, the railway must be made accordingly. Thus, in *A-G v Tewkesbury and Great Malvern Rly Co* (1863) 8 LT 682, where a plan showed an arch of 45 feet over a road, an injunction was granted to restrain the undertaker from crossing it by an arch of only 35 feet. See also *Clarke v Manchester, Sheffield and Lincolnshire Rly Co* (1861) 1 John & H 631. However, where bridges are to be constructed pursuant to an order under the Transport and Works Act 1992 (see PARA 302 et seq ante), it is normal for such bridges to be constructed in accordance with plans and specifications approved by the highway authority (which approval must not be unreasonably withheld): see the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(a), Sch 1 para 11; and PARA 305 ante.

4 Railways Clauses Consolidation Act 1845 s 49. In each of these cases the clear height at the springing of the arch must be not less than 12 feet: s 49. See note 3 supra. A footpath under an arch may be on a higher level than the carriage road and there need not be the same headroom over the footpath as is required over the carriage road: *Manchester and Leeds Rly Co v R* (1842) 3 Ry & Can Cas 633, Ex Ch. See also *A-G v Furness Rly Co* (1878) 47 LJ Ch 776.

5 Railways Clauses Consolidation Act 1845 s 49. See note 3 supra.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iv) Other Works/B. BRIDGES/347. Bridges carrying roads over railways.

347. Bridges carrying roads over railways.

Where a bridge carries a road over a railway¹, there must be a good and sufficient fence² on each side of the bridge of not less than four feet in height and on each side of the immediate approaches of not less than three feet in height³.

Further mandatory provisions and requirements relating to bridges carrying roads over railways are contained in the Transport Act 1968⁴.

1 For the meaning of 'railway' see PARA 326 note 1 ante.

2 The fence must be sufficient to make the bridge reasonably safe for any person lawfully using it: *Lay v Midland Rly Co* (1875) 34 LT 30.

3 Railways Clauses Consolidation Act 1845 s 50. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

4 See the Transport Act 1968; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 882-886.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(5) RAILWAY WORKS AND CONSTRUCTION/(iv) Other Works/B. BRIDGES/348. Width of bridge.

348. Width of bridge.

Where a bridge carries a road over a railway¹, the road over the bridge must have a clear space between the fences of 35 feet in the case of a road which at the date the special Act² was passed was a turnpike road³, 25 feet in the case of a public carriage road and 12 feet in the case of a private road⁴. However, where the average available width for the passage of carriages within 50 yards of the point where the road crosses the railway is less than the width prescribed⁵ for bridges over or under a railway, the width of the bridge need not be greater than the average width of such a road⁶, provided that, in the case of a public carriage road, it is not less than 20 feet wide⁷. Further, if at any time after the construction of the railway the average available width of the road is increased beyond the width of the bridge, the railway undertaker is bound, at its own expense, to increase the width of the bridge⁸ to such extent, not exceeding the statutory limits, as the appropriate highway authority⁹ may require¹⁰.

1 For the meaning of 'railway' see PARA 326 note 1 ante.

2 For the meaning of 'special Act' see PARA 291 note 2 ante.

3 Turnpike roads no longer exist as such: see PARA 345 note 2 ante.

4 Railways Clauses Consolidation Act 1845 s 50. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante.

5 For the meaning of 'prescribed' for these purposes see PARA 332 note 3 ante.

6 See, however, *R v Birmingham and Gloucester Rly Co* (1841) 2 QB 47, where an undertaker which was obliged by its special Act to 'restore' a road crossing its railway as it was before, used the road for approaches to a bridge over a railway, and it was held that the undertaker was bound to make the approaches as wide as the old road. As to railway undertakers see PARA 326 note 1 ante.

7 Railways Clauses Consolidation Act 1845 s 51. See note 4 supra.

8 Ie only the bridge itself: this provision does not extend to the pieces of road forming the approaches to the bridge: *Rhondda UDC v Taff Vale Rly Co* [1909] AC 253, HL.

9 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

10 Railways Clauses Consolidation Act 1845 s 51. See note 4 supra.

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349. Gradients of roads.

Where a bridge carries either a road over a railway¹ or a railway over a road, the ascent or descent of the road, as the case may be, must be a gradient of not more than 1 foot in 30 feet in the case of a road which at the date the special Act² was passed was a turnpike road³, 1 foot in 20 feet in the case of a public carriage road, or 1 foot in 16 feet in the case of a private carriage road, not being a tramroad or a railroad⁴. In the case of a tramroad or railroad, the gradient must be no greater than the prescribed⁵ rate of inclination or, where no rate is prescribed, than the rate of inclination which existed when the special Act was passed⁶.

However, if the mean inclination of any road within 250 yards of the point of crossing of the railway, or of any road which has to be altered or for which another road is substituted, is steeper than the statutory rate of inclination, the gradient of a road over or under the railway may be at an inclination not steeper than the mean inclination⁷.

1 For the meaning of 'railway' see PARA 326 note 1 ante.

2 For the meaning of 'special Act' see PARA 291 note 2 ante.

3 Turnpike roads no longer exist as such: see PARA 345 note 2 ante.

4 Railways Clauses Consolidation Act 1845 ss 49, 50. See also *A-G v Mid-Kent Rly Co and South Eastern Rly Co* (1867) 3 Ch App 100.

Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante.

5 For the meaning of 'prescribed' for these purposes see PARA 332 note 3 ante.

6 Railways Clauses Consolidation Act 1845 ss 49, 50. See note 4 supra.

7 See *ibid* s 52. See note 4 supra.

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350. Bridges over navigable tidal waters.

Where a railway undertaker¹ is authorised or required by its special Act² to construct a bridge over a navigable tidal water³, and the special Act makes no express provision as to the span or spans of the bridge, the undertaker must construct the bridge with a span or spans of such headway and waterway and with such opening span or spans, if any, and according to such plan as the Secretary of State⁴ directs or approves⁵.

1 As to railway undertakers see PARA 326 note 1 ante. All terms used in the Railways Clauses Consolidation Act 1845 have the same meanings as the same terms have when used in the Railways Clauses Act 1863: see s 3; and PARA 291 note 2 ante.

2 For the meaning of 'special Act' see PARA 291 note 2 ante. The Railways Clauses Act 1863 Pt I (ss 3-19) (as amended) applies to any railway authorised to be constructed by any special Act passed after 28 July 1863 (ie the date on which that Act received Royal Assent) and which incorporates that part of that Act: see s 3; and PARA 291 note 4 ante.

3 For these purposes, 'tidal water' means any part of the sea or any part of a river within the flow and ebb of the tide at ordinary spring tides: *ibid* s 3.

4 As to the Secretary of State see PARA 35 ante.

5 Railways Clauses Act 1863 s 14. See note 2 *supra*.

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351. Movable bridges.

A railway undertaker¹ which constructs a bridge with an opening span may not detain any vessel, barge or boat at the bridge longer than is necessary for admitting a carriage or engine traversing the railway² and approaching the bridge to cross the bridge and for opening the bridge to admit the vessel, barge or boat to pass³. In addition, an undertaker is bound to obey any regulations made by the Secretary of State⁴ for the use of such a bridge⁵. Without prejudice to any other remedy which any person may have against it, an undertaker is liable to a penalty⁶ for detaining any vessel, barge or boat longer than is necessary or for disobeying any regulations⁷.

In the case of a swing bridge, an order or scheme under the Highways Act 1980 providing for its construction⁸ must contain such provisions as the Secretary of State considers expedient for regulating its operation⁹.

1 As to railway undertakers see PARA 326 note 1 ante. All terms used in the Railways Clauses Consolidation Act 1845 have the same meanings as the same terms have when used in the Railways Clauses Act 1863: see s 3; and PARA 291 note 2 ante.

2 For the meaning of 'railway' see PARA 326 note 1 ante; and see note 1 supra.

3 Railways Clauses Act 1863 s 15 (amended by the Criminal Justice Act 1982 s 46). An undertaker is not bound to open such a bridge for a barge with a mast so constructed as to be easily lowered: see *West Lancashire Rly Co v Iddon* (1883) 49 LT 600, DC.

The Railways Clauses Act 1863 Pt I (ss 3-19) (as amended) applies to any railway authorised to be constructed by any special Act passed after 28 July 1863 (ie the date on which that Act received Royal Assent) and which incorporates that part of that Act: see s 3; and PARA 291 note 4 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

4 As to the Secretary of State see PARA 35 ante.

5 Railways Clauses Act 1863 s 15 (as amended: see note 3 supra). See note 3 supra.

6 The penalty is a fine not exceeding level 2 on the standard scale: *ibid* s 15 (as amended: see note 3 supra). See note 3 supra. As to the standard scale see PARA 370 note 7 post.

7 *Ibid* s 15 (as amended: see note 3 supra). See note 3 supra.

8 As to orders or schemes under the Highways Act 1980 providing for the construction of bridges see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 878.

9 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 878.

UPDATE

351 Movable bridges

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement

and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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C. LEVEL CROSSINGS

(A) IN GENERAL

352. Overview of the law relating to railway level crossings.

The law relating to railway level crossings is complex but can conveniently be divided into the following categories: (1) the manner of crossing of public roads and footpaths by railways¹; and (2) the manner of crossing of private roads and footpaths by railways². Each crossing will normally have been established by special Act³, and may then have had its protection arrangements modified by various statutory provisions applicable to the British Railways Board⁴, with such protection being subsequently modified by a more extensive and comprehensive order under the Level Crossings Act 1983⁵. Finally, the nature of protection available to private roads and footpaths level crossings has been brought more into line with that available for public crossings by the Transport and Works Act 1992⁶.

1 See PARA 353 post.

2 See PARA 354 post.

3 For the meaning of 'special Act' see PARA 291 note 2 ante.

4 Ie by the British Transport Commission Act 1954 s 40 (repealed); the British Transport Commission Act 1957 s 66 (repealed); and the Transport Act 1968 s 124 (repealed in relation to England and Wales): see PARA 355 post. As to the establishment and abolition of the British Railways Board see PARA 44 ante. The nature of protection to be provided at each type of crossing may be examined under the provisions which apply to grants made by national authorities towards capital expenditure on public transport facilities: see PARA 43 ante.

5 See the Level Crossings Act 1983 s 1 (as amended); and PARA 356 post.

6 See the Transport and Works Act 1992 s 52; and PARA 357 post.

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353. Manner of crossing public crossings.

Where the line of a railway¹ crosses any public highway², and unless its special Act³ otherwise provides⁴, the railway undertaker⁵ may not carry the railway across that road on the level but must either carry the road over the railway or the railway over the road by means of a bridge⁶. With the consent of two or more justices, a railway undertaker may carry a railway across any highway, other than a public carriage road on the level⁷. An undertaker who intends to apply for such consent must advertise its intention locally at least 14 days before the application is heard⁸. The justices acting in the local justice area must be satisfied that the level crossing applied for would be consistent with public safety and convenience before they give consent⁹. Any party aggrieved by the justices' determination may appeal to the Crown Court¹⁰.

1 For the meaning of 'railway' see PARA 326 note 1 ante.

2 As to public highways see HIGHWAYS, STREETS AND BRIDGES.

3 For the meaning of 'special Act' see PARA 291 note 2 ante.

4 See the Railways Clauses Consolidation Act 1845 s 46; and PARA 345 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante.

5 As to railway undertakers see PARA 326 note 1 ante.

6 See the Railways Clauses Consolidation Act 1845 s 46; and PARA 345 ante. See note 4 supra.

7 See the Railways Clauses Consolidation Act 1845 s 46 proviso (amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 22, Sch 10). See note 4 supra.

The proviso does not give power to compel an undertaker to carry a footpath across a railway by a bridge, even where users of the path have to make their way up and down steep railway embankments by steps: *Dartford RDC v Bexley Heath Rly Co* [1898] AC 210, HL.

8 See the Railways Clauses Consolidation Act 1845 s 59 (amended by the Courts Act 2003 Sch 8 para 23(a)). See note 4 supra.

9 See the Railways Clauses Consolidation Act 1845 s 59 (amended by the Courts Act 2003 Sch 8 para 23(b)). See note 4 supra.

10 See the Railways Clauses Consolidation Act 1845 s 60. See note 4 supra. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

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354. Manner of crossing private crossings.

A railway undertaker¹ is required to make and maintain crossings with gates ('accommodation crossings') wherever they are necessary to make good interruptions in the use of the adjoining land². However, this duty is owed only to persons who own or occupy the adjoining land³, and the right of way over the crossing is limited, although it may become public by dedication⁴.

1 As to railway undertakers see PARA 326 note 1 ante.

2 See the Railways Clauses Consolidation Act 1845 s 68; and PARA 333 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

3 See the Railways Clauses Consolidation Act 1845 s 68; *Buxton v North Eastern Rly Co* (1868) LR 3 QB 549. See note 2 supra.

4 As to rights of way over level crossings see PARA 334 ante.

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355. Protection of public crossings other than under the Level Crossings Act 1983.

The Railways Clauses Consolidation Act 1845 provides: (1) that where a railway¹ crosses a public carriage road² on a level, the railway undertakers³ must erect and maintain good and sufficient gates⁴ across the road on each side of the railway and must employ gatekeepers to open and shut the gates, and to keep them constantly closed across the road except for the passage of traffic or, if the Secretary of State⁵ so orders, across the railway except for the passage of trains⁶; and (2) that where a crossing adjoins a station the Secretary of State may make regulations which must be complied with⁷. Further provisions are to be found in the Railway Clauses Act 1863⁸ with regard to public carriage roads and the Highway (Railway Crossings) Act 1839⁹, the Railway Regulation Act 1842¹⁰ and the Transport Act 1968¹¹ with regard to highways which are not public carriage roads¹².

Where a crossing of a highway other than a public carriageway is authorised under the Railways Clauses Consolidation Act 1845 the undertaker, at its own expense, must make and maintain convenient ascents and descents and other convenient approaches, with handrails or other fences¹³. In addition, in the case of a bridleway, the undertaker must erect and maintain good and sufficient gates, and in the case of a footpath good and sufficient gates or stiles, on each side of the railway¹⁴. However, an undertaker is not required to provide a gatekeeper¹⁵, nor to keep the gates locked¹⁶. An undertaker who fails to provide the necessary approaches, fences, gates and stiles may be ordered by two justices to carry out the required works within a specified time¹⁷, and if it fails to comply with such order is liable to a daily penalty of £5¹⁸.

The Secretary of State, if on the application of the railway company¹⁹ concerned he is satisfied that it is expedient to do so, may direct that the gates on any level crossing over a public road are, instead of being kept closed across the road, to be kept closed across the railway²⁰, either constantly or on such days or during such portions of any day as he thinks fit²¹. Where such a direction is given, then, notwithstanding anything in any public general or other Act to the contrary, the gates must be kept closed in accordance with his direction except when engines or vehicles passing along the railway have occasion to cross the road²². If the person entrusted with the care of the gates fails to comply with the direction of the Secretary of State, he is liable on summary conviction to a penalty for each offence²³.

In practice, new protective measures for public crossings are applied for under the Level Crossings Act 1983 procedures²⁴.

1 For the meaning of 'railway' for these purposes see PARA 326 note 1 ante.

2 As to public carriage roads see HIGHWAYS, STREETS AND BRIDGES.

3 As to railway undertakers see PARA 326 note 1 ante.

4 The gates must be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway: see the Railways Clauses Consolidation Act 1845 s 47. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

5 As to the Secretary of State see PARA 35 ante.

6 See the Railways Clauses Consolidation Act 1845 s 47. The penalty for contravention by the gatekeeper is level 1 on the standard scale: see s 47 (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 370 note 7 post.

7 Railways Clauses Consolidation Act 1845 s 48 (amended by the Road and Rail Traffic Act 1933 ss 42(3), 48, Sch 3). See note 4 supra.

8 Where a railway undertaker is authorised by special Act to carry the railway across a public carriage road on a level, the undertaker must not, in shunting trains to pass any train over the level crossing or at any time, allow any train, engine, carriage or truck to stand across it: see the Railway Clauses Act 1863 s 5. The Railways Clauses Act 1863 Pt I (ss 3-19) (as amended) applies to any railway authorised to be constructed by any special Act passed after 28 July 1863 (ie the date on which that Act received Royal Assent) and which incorporates that part of that Act: see s 3; and PARA 291 note 4 ante.

As to offences in relation to public level crossings see PARA 405 post.

9 See the Highway (Railway Crossings) Act 1839 s 1 (amended by the Statute Law Revision (No 2) Act 1890; and the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 12, Schedule), which provides that wherever a railroad crosses a highway the railway undertaker must make and maintain good and sufficient gates at each end of the highway at each crossing and must employ gatekeepers to open and shut the gates for the safe passage of persons, carts and carriages.

10 See the Railway Regulation Act 1842 s 9, which provides that, notwithstanding any other statutory provision, the gates must be kept closed across the road, but the Secretary of State may order that the gates at any particular crossing must be kept closed against the railway and the gates must be so constructed as to keep the railway fenced from cattle and horses passing on the road.

11 As to the power of highway and other authorities to contribute to the cost of barriers, lights, signs or other devices or appliances for the protection or convenience of the public at or near any level crossing see the Transport Act 1968 s 123 (amended by the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 s 102, Sch 17; the Local Government etc (Scotland) Act 1994 s 180(1), Sch 13 para 80(10); and the Railways Act 1993 (Consequential Modifications) (No 5) Order 1996, SI 1996/420, art 2, Schedule para 7).

12 The Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303) has effect as if the Highway (Railway Crossings) Act 1839 (see the text and note 9 supra), the Railway Regulation Act 1842 (see the text and note 10 supra), the Road and Rail Traffic Act 1933 (see the text and notes 19-23 infra) and the Level Crossings Act 1983 (see PARA 356 post) were existing statutory provisions within the meaning of the Health and Safety at Work etc Act 1974 Pt I (as amended) (see PARA 194 ante) and accordingly are enforceable under that Part of that Act (see PARA 371 post).

13 See the Railways Clauses Consolidation Act 1845 s 61. See note 4 supra. An undertaker's duty under s 61 is absolute: *Parkinson v Garstang and Knott End Rly Co* [1910] 1 KB 615, DC.

14 See the Railways Clauses Consolidation Act 1845 s 61. See note 4 supra. See also *Williams v Great Western Rly Co* (1874) LR 9 Exch 157; *Thomas v British Railways Board* [1976] QB 912, [1976] 3 All ER 15, CA.

15 *Cliff v Midland Rly Co* (1870) LR 5 QB 258, explaining and commenting on *Bilbee v London, Brighton and South Coast Rly Co* (1865) 18 CBNS 584. See also *Stubley v London and North Western Rly Co* (1865) 4 H & C 83; *Walker v Midland Rly Co* (1866) 14 LT 796; *Newman v London and South Western Rly Co* (1890) 55 JP 375.

16 *Macpherson v Callander and Oban Rly Co* (1887) 25 Sc LR 474; *Ruddy v Great Northern Rly Co* (1915) 50 ILT 37.

17 The justices have no power under this provision to order the erection of handrails or fences on a public carriage road: *R v Schofield* (1893) 69 LT 313, DC.

18 See the Railways Clauses Consolidation Act 1845 s 62. The justices who impose the penalty may order it to be applied in executing the required works: see s 62. See note 4 supra.

19 For these purposes, 'railway company' includes any person or body of persons, whether incorporated or not, being the owner or owners or lessee or lessees of, or working, a railway: see the Road and Rail Traffic Act 1933 s 45.

20 For these purposes, 'railway' includes a light railway, not being a light railway which is laid wholly or mainly along a public carriage way and is used wholly or mainly for the carriage of passengers: *ibid* s 45.

21 *Ibid* s 42(1). These powers are in addition to, and not in derogation of, the powers conferred by the Railways Clauses Consolidation Act 1845 s 47 (see the text and notes 1-6 supra), or by any provision in a local

and personal or private Act which relates to the closing of gates on level crossings: Road and Rail Traffic Act 1933 s 42(2).

22 Ibid s 42(1).

23 See *ibid* s 42(1) (as amended); and PARA 405 post.

24 See PARA 356 post.

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356. Protection of public crossings under the Level Crossings Act 1983.

The current statutory position relating to level crossings over public carriage roads (which applies also to crossings over other roads to which the public has access) is set out in the Level Crossings Act 1983¹.

The Secretary of State² may, in relation to any place where a railway crosses a road³ on a level (referred to as a 'level crossing'), by order provide for the protection of those using the level crossing⁴. The Secretary of State may make such an order in respect of a level crossing on being requested to do so by the operator⁵ of the crossing or without any such request⁶. Such an order may make such provision as the Secretary of State considers necessary or expedient for the safety or convenience of those using the crossing⁷. In particular, such an order:

- 1094 (1) may require the operator of the crossing or the local traffic authority (or both) to provide at or near the crossing any protective equipment specified in the order and to maintain and operate that equipment in accordance with the order⁸; and
- 1095 (2) may impose on the operator requirements as to the operation of the railway at or near that crossing⁹.

While such an order is in force in relation to a level crossing, then, subject to any exceptions specified in the order, any provision made by or under any enactment as to the crossing (or level crossings including that crossing) and imposing requirements as to protective equipment at or near the crossing, the supervision of the crossing (including the provision of buildings for the purposes of supervision) or the operation of the railway at or near the crossing will not apply in relation to the crossing¹⁰.

Where such an order is in force in relation to a level crossing, the operator of the crossing must ensure that the order is complied with¹¹.

1 See the text and notes 2-11 *infra*. As to the protection of public crossings other than under the Level Crossings Act 1983 see PARA 355 *ante*.

2 As to the Secretary of State see PARA 35 *ante*. In performing his functions under the Level Crossings Act 1983, the Secretary of State must take account of any advice given to him with respect thereto by or on behalf of the Office of Rail Regulation: s 1(10B) (added by the Level Crossings Regulations 1997, SI 1997/487, reg 4(7); amended by the Railways Act 2005 s 59(1), Sch 12 para 6(1), (3)). As to the Office of Rail Regulation see PARA 49 *et seq ante*.

3 For these purposes, 'road' means any highway or other road to which the public has access: Level Crossings Act 1983 s 1(11).

4 *Ibid* s 1(1). This provision is subject to the provisions of s 1(1A)-(11) (as amended): s 1(1). Section 1(1) applies whether or not the crossing is in use when the order is made; and if it is not in use when the order is made the order is to be made so as to come into force when it is in use: s 1(1A) (added by the Level Crossings Regulations 1997, SI 1997/487, reg 4(2)). See note 11 *infra*. An order under the Level Crossings Act 1983 s 1 (as amended) may be varied or revoked by a subsequent order under s 1 (as amended) and may impose requirements as to protective equipment provided before the making of the order: s 1(5) (amended by the Road Safety Act 2006 s 50(1), (5)). For these purposes, 'protective equipment' includes barriers, lights, traffic signs, manual, mechanical, automatic, electrical, telephonic or television equipment or other devices: Level Crossings

Act 1983 s 1(11) (definition substituted by the Level Crossings Regulations 1997, SI 1997/487, reg 4(8); amended by the Road Safety Act 2006 s 50(1), (9)(c)). 'Barrier' includes gate: Level Crossings Act 1983 s 1(11).

The provisions of s 1 (as amended) apply where a government department is operating a railway at a level crossing as it applies in other cases: s 1(10).

Any order made under the Transport Act 1968 s 124 (repealed in relation to England and Wales) or the British Transport Commission Act 1957 s 66 (repealed) and in force immediately before 1 April 1997, including any requirements or conditions laid down under the order, will have effect as if it had been made under the Level Crossings Act 1983 s 1 (as amended): s 1(10A) (added by the Level Crossings Regulations 1997, SI 1997/487, reg 4(7)).

5 For these purposes, 'operator', in relation to a crossing, means any person carrying on an undertaking which includes maintaining the permanent way: Level Crossings Act 1983 s 1(11) (definition substituted by the Transport and Works Act 1992 s 51).

6 Level Crossings Act 1983 s 1(6) (substituted by the Road Safety Act 2006 s 50(1), (6)). However, the Secretary of State may not make an order without a request by the operator unless he has consulted the Office of Rail Regulation and the local traffic authority about the order he proposes to make and, having done so, he has sent to the operator, the Office of Rail Regulation and the local traffic authority a copy of a draft of the order he proposes to make and a notice specifying the period (not being less than two months) within which they may make representations to him in respect of his proposal to make the order: Level Crossings Act 1983 s 1(6ZA) (added by the Road Safety Act 2006 s 50(1), (6)). 'Local traffic authority', in relation to a crossing, means the authority which for the purposes of the Road Traffic Regulation Act 1984 is the local traffic authority for the road crossed by the railway at the crossing: Level Crossings Act 1983 s 1(11) (definition added by the Road Safety Act 2006 s 50(1), (9)(b)). As to local traffic authorities for the purposes of the Road Traffic Regulation Act 1984 see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 293. Where the Office of Rail Regulation gives written notice to an operator of a crossing that in its opinion a request should be made to the Secretary of State to make an order under the Level Crossings Act 1983 s 1 (as amended) in respect of that crossing and the notice states the reasons for that opinion, the operator is under a duty to make such a request: s 1(6A) (added by the Level Crossings Regulations 1997, SI 1997/487, reg 4(4); amended by the Railways Act 2005 Sch 12 para 6(1), (2)).

Where the operator of a crossing requests the Secretary of State to make an order under the Level Crossings Act 1983 s 1 (as amended), the request must be accompanied by a draft of the order which the operator is requesting the Secretary of State to make: s 1(7) (substituted by the Level Crossings Regulations 1997, SI 1997/487, reg 4(5)). Before making a request, the operator must consult the Office of Rail Regulation and the local traffic authority about the draft order he intends to submit to the Secretary of State and, having done so, must give written notice to the Office of Rail Regulation and the local traffic authority of his intention to make a request: Level Crossings Act 1983 s 1(8) (substituted by the Road Safety Act 2006 s 50(1), (7)). A notice so given must be accompanied by a copy of the draft order which the operator intends to submit to the Secretary of State and must specify the period (not being less than two months) within which the Office of Rail Regulation and the local traffic authority may make representations to the Secretary of State in respect of the request: Level Crossings Act 1983 s 1(8A) (added by the Road Safety Act 2006 s 50(1), (7)).

The Secretary of State must consider any representations made to him pursuant to s 1(6ZA) (as added) or s 1(8A) (as added) if they have been made within the period specified in the notice referred to in the subsection concerned and may then, if he decides to make the order, make it in accordance with the draft sent to persons pursuant to the subsection concerned or with such modifications as he thinks fit: s 1(9) (substituted by the Level Crossings Regulations 1997, SI 1997/487, reg 4(6); amended by the Road Safety Act 2006 s 50(1), (8)).

7 Level Crossings Act 1983 s 1(2).

8 Ibid s 1(2)(a) (substituted by the Road Safety Act 2006 s 50(1), (2)).

9 Level Crossings Act 1983 s 1(2)(b) (amended by the Road Safety Act 2006 s 50(1), (3)).

10 Level Crossings Act 1983 s 1(3) (amended by the Road Safety Act 2006 ss 50(1), (4), 59, Sch 7; and the Level Crossings Regulations 1997, SI 1997/487, reg 3(6)). Nothing in the Level Crossings Act 1983 s 1(3) (as amended) affects any provision as to traffic signs made under the Road Traffic Regulation Act 1967; but a traffic sign placed on or near a road in pursuance of an order under the Level Crossings Act 1983 s 1 (as amended) is to be treated for the purposes of the Road Traffic Regulation Act 1967 s 54(4) as having been placed as provided by that Act (see ROAD TRAFFIC): Level Crossings Act 1983 s 1(4). Nor does anything in s 1(3) (as amended) affect any provision made by or under the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303): Level Crossings Act 1983 s 1(4A) (added by the Level Crossings Regulations 1997, SI 1997/487, reg 4(3)). For these purposes, 'traffic sign' has the same meaning as in the Road Traffic Regulation Act 1984 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 830): Level Crossings Act 1983 s 1(11) (definition amended by the Road Traffic Regulation Act 1984 s 146, Sch 13 para 57). The Health and Safety at Work etc Act 1974 Pt I (as amended) has effect as if the Level Crossings Act 1983 (amongst other Acts) were an existing statutory provision within the meaning of the Health and Safety at Work

etc Act 1974 Pt I (as amended) (see PARA 194 ante) and accordingly is enforceable under that Part of that Act (see PARA 371 post).

11 Level Crossings Regulations 1997, SI 1997/487, reg 3(1). This provision applies whether or not the order was made before the coming into force of the regulations, ie 1 April 1997: reg 3(1). See note 4 supra. In any proceedings for an offence for contravention of reg 3(1) it is a defence for the person charged to prove: (1) that the contravention was due to the act or default of another person not being one of his employees (the 'other person'); and (2) that he took all reasonable precautions and exercised all due diligence to avoid the contravention: reg 3(2). The person charged is not, without permission of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing to determine the mode of trial he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession: reg 3(3). Where a contravention of this provision by any person is due to the act or default of some other person, that other person is guilty of the offence which would, but for any defence under this provision available to the first-mentioned person, be constituted by the act or default: reg 3(4).

The Level Crossings Regulations 1997, SI 1997/487, are made under the Health and Safety at Work etc Act 1974 Pt I (as amended) (see note 10 supra); and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 4(4) provides that, notwithstanding specified exceptions, the Office of Rail Regulation will be the enforcing authority for orders made under the Level Crossings Act 1983 s 1 (as amended) (see PARA 195 ante).

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357. Nature of protection of private crossings.

Except where otherwise provided in the special Act¹ an undertaker is not under any duty to appoint a gatekeeper at an accommodation crossing² or to keep the gates locked³. The duty is on the driver of the vehicle using such a crossing to look out for trains⁴.

The operator⁵ of a railway⁶ which is crossed⁷ in any place by a private road or path⁸ may cause or permit crossing signs or barriers⁹ of a character¹⁰ prescribed in regulations¹¹ made by the Secretary or State¹² or otherwise authorised by him, to be placed¹³ on or near the road or path near the crossing¹⁴. The Secretary of State may give directions to the operator of a railway which is crossed in any place by a private road or path for the placing of crossing signs or barriers of a character specified in the directions on or near the road or path near the crossing¹⁵. Powers are given to operators of railways to enter land owned by third parties to erect crossing signs and barriers subject to compliance with prescribed procedures¹⁶, and default powers are reserved to the Secretary of State to carry out work¹⁷.

1 For the meaning of 'special Act' see PARA 291 note 2 ante.

2 *Liddiatt v Great Western Rly Co* [1946] KB 545, [1946] 1 All ER 731, CA. As to accommodation crossings see PARA 354 ante.

3 *Ruddy v Great Northern Rly Co* (1915) 50 ILT 37.

4 *Lloyds Bank Ltd v British Transport Commission* [1956] 3 All ER 291, [1956] 1 WLR 1729, CA; *Kemshead v British Transport Commission* [1958] 1 All ER 119, [1958] 1 WLR 173n, CA; *Hazell v British Transport Commission* [1958] 1 All ER 116, [1958] 1 WLR 169.

5 For these purposes, 'operator' in relation to a transport system means any person carrying on an undertaking which includes the system or any part of it or the provision of transport services on the system: Transport and Works Act 1992 s 67(1). In the case of a railway or tramway which has more than one operator, the powers conferred by ss 52-54 (s 54 as amended) are only exercisable by or in relation to the operator carrying on the undertaking which includes maintaining the permanent way: s 56(2). For these purposes, 'maintain' includes repair and replace: s 56(1).

6 For the meaning of 'railway' see PARA 302 note 4 ante.

7 For these purposes, 'cross' means cross otherwise than by tunnel or bridge: Transport and Works Act 1992 s 56(1).

8 For these purposes, 'private road or path' means any length of road or path to which the public does not have access: *ibid* s 56(1).

9 'Barrier' includes gate: *ibid* s 56(1). 'Crossing sign' in relation to a private road or path and any place where it crosses a railway means: (1) any object or device (whether fixed or portable); or (2) any line or mark on the road or path, for conveying to users of the road or path warnings, information, requirements, restrictions or prohibitions relating to the crossing: s 56(1).

10 For these purposes, the size and colour of a crossing sign and whether or not it is illuminated (by lighting or the use of reflectors or reflecting material), and the nature of the warnings, information, requirements, restrictions or prohibitions conveyed by it, are to be regarded as part of the sign's character: *ibid* s 52(3).

11 The power to make regulations under *ibid* s 52 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 52(4). Such regulations may make different provision for different cases: s 52(5). As to regulations made under this provision see the Private

Crossings (Signs and Barriers) Regulations 1996, SI 1996/1786, which deal with the colours, sizes, dimensions and placement of signs, and the positioning and construction of gates and barriers.

12 As to the Secretary of State see PARA 35 ante.

13 'Place' includes erect and (in relation to a sign) display: Transport and Works Act 1992 s 56(1).

14 Ibid s 52(1). As to offences see PARA 406 post.

15 Ibid s 52(2). A direction given under s 52(2) if relating to a private road or path in England and Wales, is enforceable on the application of the Secretary of State by a mandatory order: s 54(3)(a). As to the grant of a mandatory order (formerly an order of mandamus) to enforce statutory rights and duties generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

16 See PARAS 360, 361 post.

17 As to the default powers of the Secretary of State see PARA 361 post.

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358. Replacement of level crossings by bridges over public carriage roads.

Although a railway undertaker¹ invariably has power under its special Act² to cross any public carriage road on the level³, the Secretary of State⁴, if it appears to him necessary for the public safety, may at any time require the undertaker, within such time as he directs, and at the expense of the undertaker, to carry the road either under or over the railway⁵ by means of a bridge or arch instead of crossing it on the level, or to execute such other works as appear to the Secretary of State as best adapted in the circumstances for removing or diminishing the danger arising from the level crossing⁶. Where a bridge is substituted under these provisions, the undertaker is not required to erect and maintain a lodge at the crossing⁷ or to appoint a person to watch or superintend the crossing⁸.

Where the Secretary of State, in exercise of powers given by any general or special Act, orders a railway undertaker to provide a bridge, subway or approach or any work of a similar character, he may apportion the expense of constructing the work between the undertaker and the applicants for the order by an agreement between the parties⁹. Any local highway authority¹⁰ or other authority having power to levy rates¹¹ may enter into such an agreement¹².

1 As to railway undertakers see PARA 326 note 1 ante.

2 For the meaning of 'special Act' see PARA 291 note 2 ante. All terms used in the Railways Clauses Consolidation Act 1845 have the same meanings as the same terms have when used in the Railways Clauses Act 1863: see s 3; and PARA 291 note 2 ante.

3 See PARA 353 ante.

4 As to the Secretary of State see PARA 35 ante.

5 For the meaning of 'railway' for these purposes see PARA 326 note 1 ante.

6 Railways Clauses Act 1863 s 7. In *Re Bristol and North Somerset Rly Co* (1877) 3 QBD 10, where an order under the Railways Clauses Act 1863 s 7 was not obeyed, the court refused the grant of a mandatory order (formerly an order of mandamus) to compel the undertaker to carry out the order on proof that the undertaker's funds were exhausted and it had no power to raise more. As to the grant of a mandatory order (formerly an order of mandamus) to enforce statutory rights and duties generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

The Railways Clauses Act 1863 Pt I (ss 3-19) (as amended) applies to any railway authorised to be constructed by any special Act passed after 28 July 1863 (ie the date on which that Act received Royal Assent) and which incorporates that part of that Act: see s 3; and PARA 291 note 4 ante.

7 As to lodges see *ibid* s 6 (as amended); and PARA 405 post.

8 *Ibid* s 7. See note 6 supra.

9 Railway and Canal Traffic Act 1888 s 16(1) (amended by the Transport Act 1962 s 95(1), Sch 12 Pt I). Any question respecting the apportionment of expenses may be determined by the High Court: see the Railway and Canal Traffic Act 1888 s 16(2); the Transport Act 1947 s 75, Sch 11 (repealed); and the Transport Act 1962 s 57(8) (repealed).

10 As to local highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 56-62.

11 As to authorities who have power to levy rates see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 530; RATING AND COUNCIL TAX.

12 Railway and Canal Traffic Act 1888 s 16(1) (amended by the Highways Act 1959 s 309, Sch 22 (repealed); and the Transport Act 1962 Sch 12 Pt I (repealed)). As to the expenses of local authorities in relation to such an agreement see the Railway and Canal Traffic Act 1888 s 54 (as amended).

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359. Public footpaths, bridleways and restricted byways over railways.

The Secretary of State¹ may by order² require an operator³ to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway⁴ at or reasonably near to the crossing to which a closure or diversion application⁵ relates⁶. Such an order may include particulars as to the tunnel or bridge which is to be provided or as to the improvements which are to be made⁷.

Such an order can be made where:

- 1096 (1) a public right of way over a footpath⁸, bridleway⁹ or restricted byway¹⁰ crosses a railway otherwise than by a tunnel or bridge¹¹;
- 1097 (2) the operator of the railway has made a closure or diversion application in respect of the crossing¹²; and
- 1098 (3) in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it¹³.

The Secretary of State must not make such an order after the end of the period of two years beginning with the day on which the closure or diversion application is made, and not less than two months before making an order he must give written notice¹⁴ of his proposal to make the order to the operator and to each local authority¹⁵ in whose area the crossing (or any proposed new crossing) is situated¹⁶. Such a notice must be accompanied by a draft of the proposed order, and any order eventually made may include modifications of the draft¹⁷.

An operator will not be regarded as in breach of a duty imposed by such an order if he has used his best endeavours to comply with the order¹⁸. However, where an operator is required by an order to provide or improve a bridge or tunnel, but is unable to do so because he does not have the powers or rights (including rights over land¹⁹) needed for the purpose, he will not be taken to have used his best endeavours to comply with the order unless he has used his best endeavours to obtain those powers or rights²⁰.

1 As to the Secretary of State see PARA 35 ante.

2 I.e. under the Transport and Works Act 1992 s 48(2). At the date at which this volume states the law, no orders had been made under this provision.

3 For these purposes, 'operator', in relation to a railway or tramway, means any person carrying on an undertaking which includes maintaining the permanent way: *ibid* s 48(8).

4 For the meaning of 'railway' see PARA 302 note 4 ante.

5 For these purposes, 'closure or diversion application' means: (1) an application made under the Transport and Works Act 1992 s 6 (as amended) (see PARA 307 ante); or (2) a request made in accordance with the Highways Act 1980 s 120(3A)(b) (as added) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 658), for an order by virtue of which a public right of way would be extinguished or diverted: Transport and Works Act 1992 s 48(8).

6 *Ibid* s 48(2).

7 *Ibid* s 48(3).

8 For these purposes, 'footpath' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64): Transport and Works Act 1992 s 48(8).

9 For these purposes 'bridleway' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64): Transport and Works Act 1992 s 48(8).

10 For these purposes 'restricted byway' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt 2 (ss 47-72) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603): Transport and Works Act 1992 s 48(8) (definition added by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

11 Transport and Works Act 1992 s 48(1)(a) (amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I).

12 Transport and Works Act 1992 s 48(1)(b).

13 Ibid s 48(1)(c).

14 As to the service of notices under the Transport and Works Act 1992 see PARA 308 ante.

15 For these purposes, 'local authority' means a county council, a district council, a London borough council, the Common Council of the City of London, a county borough council, a parish or community council and a parish meeting of a parish not having a separate parish council: *ibid* s 48(8) (amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 34(3)). As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to London boroughs and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

16 Transport and Works Act 1992 s 48(4).

17 Ibid s 48(5).

18 Ibid s 48(6).

19 As to the meaning of 'rights over land' for these purposes see PARA 303 note 11 ante.

20 Transport and Works Act 1992 s 48(7). The text refers to powers or rights obtained whether by means of an order under s 1 (see PARA 302 ante) or otherwise: see s 48(7).

UPDATE

359 Public footpaths, bridleways and restricted byways over railways

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(B) POWERS OF THE SECRETARY OF STATE

360. Rights to enter land.

The operator¹ of a railway² or tramway³ may not enter or do anything on any land for the purpose of exercising his statutory powers in relation to the placing⁴ of signs and barriers⁵ except with the consent of every owner of the land⁶, or in accordance with an authorisation given by the Secretary of State⁷.

Where the operator of a railway or tramway proposes to enter or do anything on any land for the purpose of exercising such statutory powers but has not obtained the consent of every owner of the land to his proposals (after making reasonable efforts to do so), he must serve on every owner whose consent he has not obtained a notice⁸ giving details of the proposals⁹; and stating that: (1) he is referring the proposals to the Secretary of State for a decision as to whether or not they should be carried out¹⁰; and (2) in making that decision, the Secretary of State will consider any written representations made to him by the owner within the period of 42 days beginning with the date of the notice¹¹.

In such circumstances¹², the operator must also: (a) submit a copy of every such notice served by him to the Secretary of State¹³; and (b) provide the Secretary of State with such further information about the proposals as he may require¹⁴.

Where proposals are so referred to the Secretary of State, he must after the expiry of the period of 42 days beginning with the date of the latest notice served¹⁵ and after considering any representations made to him¹⁶: (i) authorise the operator to carry out the proposals (either without modifications or with such modifications as the Secretary of State may specify)¹⁷; or (ii) direct him not to carry out the proposals¹⁸, and must serve notice of his decision on every owner served with a notice¹⁹.

Any such authorisation may be given subject to such conditions as the Secretary of State may specify, including conditions that compensation is to be payable by the operator²⁰.

The operator of a railway or tramway may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of: (A) complying with any directions given by the Secretary of State²¹; or (B) maintaining²² a crossing sign²³ or barrier²⁴ lawfully placed²⁵ on or near a private road or path²⁶ near a place where it crosses the railway or tramway²⁷.

The Secretary of State may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of exercising his statutory default powers²⁸.

1 For the meaning of 'operator' see PARA 357 note 5 ante.

2 For the meaning of 'railway' see PARA 302 note 4 ante.

3 For the meaning of 'tramway' see PARA 302 note 4 ante.

4 As to the meaning of 'place' see PARA 357 note 13 ante.

5 Ie under the Transport and Works Act 1992 s 52(1) (see PARA 357 ante); see s 53(1). As to the meaning of 'barrier' see PARA 357 note 9 ante.

6 For these purposes, 'owner', in relation to any land in England and Wales, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of, the land under a tenancy, other than a tenancy for a month or any period less than a month: *ibid* s 53(9). For the meanings of 'England' and 'Wales' see *PARA 29* note 3 *ante*. As to ownership of land see *REAL PROPERTY* vol 39(2) (Reissue) *PARA 91 et seq.*

7 *Ibid* s 53(1). The text refers to authorisation given by the Secretary of State under s 53(4) (see the text and notes 15-19 *infra*): see s 53(1). As to the Secretary of State see *PARA 35 ante*.

8 As to the serving of notices see *PARA 308 ante*.

9 Transport and Works Act 1992 s 53(2).

10 *Ibid* s 53(2)(a).

11 *Ibid* s 53(2)(b).

12 *Ie* where *ibid* s 53(2) (see the text and notes 8-11 *supra*) applies: see s 53(3).

13 *Ibid* s 53(3)(a).

14 *Ibid* s 53(3)(b).

15 *Ie* under *ibid* s 53(2) (see the text and notes 8-11 *supra*): see s 53(4).

16 *Ibid* s 53(4).

17 *Ibid* s 53(4)(a).

18 *Ibid* s 53(4)(b).

19 *Ibid* s 53(4).

20 *Ibid* s 53(5). Any dispute as to the amount of any compensation payable must be referred to and determined by the Lands Tribunal: s 53(6). As to the Lands Tribunal see *COMPULSORY ACQUISITION OF LAND* vol 18 (2009) *PARA 720 et seq.*

21 *Ibid* s 53(7)(a). The text refers to compliance with directions given under s 52(2) (see *PARA 357 ante*): see s 53(7)(a).

22 As to the meaning of 'maintain' see *PARA 357* note 5 *ante*.

23 For the meaning of 'crossing sign' see *PARA 357* note 9 *ante*.

24 For the default powers of the Secretary of State where an operator fails to maintain such a crossing sign or barrier see *PARA 357* note 15 *ante*.

25 For these purposes, 'lawfully placed' means placed in accordance with the Transport and Works Act 1992 ss 52-54 (s 54 as amended): s 56(1).

26 For the meaning of 'private road or path' see *PARA 357* note 8 *ante*.

27 Transport and Works Act 1992 s 53(7)(b).

28 *Ibid* s 53(8). The powers referred to are those under s 54(1) (see *PARA 361 post*): see s 53(8).

UPDATE

360 Rights to enter land

NOTE 20--Reference to the Lands Tribunal is now to the Upper Tribunal: Transport and Works Act 1992 s 53(6) (amended by SI 2009/1307).

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361. Default powers of Secretary of State.

If the operator¹ of a railway² or tramway³ fails⁴:

1099 (1) to comply with a direction given by the Secretary of State in connection with the placing of signs and barriers⁵; or

1100 (2) to maintain⁶ a crossing sign⁷ or barrier lawfully placed⁸ on or near a private road or path⁹ near a place where it crosses the railway or tramway¹⁰,

the Secretary of State may himself carry out the work required by the direction¹¹ or necessary to maintain the crossing sign or barrier¹². Any expenses incurred by the Secretary of State in doing so are recoverable by him from the operator¹³.

A direction given by the Secretary of State as mentioned in head (1) above¹⁴, if relating to a private road or path in England and Wales¹⁵, is enforceable on the application of the Secretary of State by a mandatory order¹⁶.

1 For the meaning of 'operator' see PARA 357 note 5 ante.

2 For the meaning of 'railway' see PARA 302 note 4 ante.

3 For the meaning of 'tramway' see PARA 302 note 4 ante.

4 Transport and Works Act 1992 s 54(1). For these purposes, 'fail' includes refuse: s 56(1).

5 Ibid s 54(1)(a). The text refers to a direction given under s 52(2) (see PARA 357 ante): see s 54(1)(a). As to the meaning of 'barrier' see PARA 357 note 9 ante. As to the Secretary of State see PARA 35 ante.

6 As to the meaning of 'maintain' see PARA 357 note 5 ante.

7 For the meaning of 'crossing sign' see PARA 357 note 9 ante.

8 For the meaning of 'lawfully placed' for these purposes see PARA 360 note 25 ante.

9 For the meaning of 'private road or path' see PARA 357 note 8 ante.

10 Transport and Works Act 1992 s 54(1)(b).

11 As to the power of the Secretary of State to enter land and do anything necessary on it, without the consent of the owner, for the purpose of exercising his powers to carry out work himself under ibid s 54(1) see PARA 360 ante.

12 Ibid s 54(1).

13 Ibid s 54(2).

14 Ie a direction given under ibid s 52(2) (see PARA 357 ante): see s 54(3).

15 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

16 Transport and Works Act 1992 s 54(3). As to the grant of a mandatory order (formerly known as an order of mandamus) to enforce statutory rights and duties generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

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(C) OBLIGATIONS AND DUTIES OF UNDERTAKERS

362. Extent of undertaker's statutory obligation.

The statutory obligation of railway undertakers¹ in relation to level crossings over roads applies only to public carriage roads². However, whether a road is a public carriage road is a question of fact³, and the extent of the statutory obligation is measured by reference to the circumstances existing at the time the railway was constructed⁴. Similarly, the duty of persons using a level crossing over an occupation road⁵ to shut the gate persists even after the road becomes maintainable by a highway authority⁶, and no new obligation is then imposed on the undertaker to provide a gatekeeper⁷. However, if, after an occupation road has become a public carriage road, the undertaker obtains statutory power to widen the line and the widened line crosses the public carriageway the statutory obligation may be enlarged⁸. In any case, an undertaker is required at common law⁹ to take all reasonable precautions to avert danger at level crossings and, as the danger increases, so must the precautions¹⁰. An undertaker is bound to keep the crossing in a proper state for the passage of vehicles across the rails and is liable for damage to a vehicle through the rails being too high¹¹. However, where under the Railways Clauses Consolidation Act 1845 a railway¹² is crossed by a highway at a level crossing, the road being raised by inclined planes to the higher level of the railway¹³, the undertaker is not liable to keep the approaches to the crossing in repair¹⁴ nor to regrade those approaches where the railway has been raised to its original level after subsidence¹⁵.

The owner of property in the vicinity of a level crossing has no right to compensation because he is likely to suffer more inconvenience than the owner of property at a distance¹⁶. Authority in the special Act to make a level crossing has been held to be permissive¹⁷.

1 As to railway undertakers see PARA 326 note 1 ante.

2 See PARAS 355, 356 ante.

3 *R v Longe* (1897) 66 LJQB 278, DC, where the case was remitted to the justices to determine whether a road described on the plans as an occupation road was in fact a public carriage road.

4 *A-G v Great Northern Rly Co* [1916] 2 AC 356 at 380, HL, per Lord Sumner.

5 I.e. the duty under the Railways Clauses Consolidation Act 1845 s 75 (as amended) (see PARA 405 post). Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

6 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

7 *Copps v Payne* [1950] 1 KB 611, [1950] 1 All ER 246, DC.

8 *Lloyds Bank Ltd v Railway Executive* [1952] 1 All ER 1248, CA.

9 As to the obligations of railway undertakers at common law see PARA 366 post.

10 *Smith v London Midland and Scottish Rly Co* 1948 SC 125, Ct of Sess.

11 *Oliver v North Eastern Rly Co* (1874) LR 9 QB 409; *Bell v Caledonian Rly Co* (1902) 4 F 431, Ct of Sess.

12 For the meaning of 'railway' see PARA 326 note 1 ante.

13 See the Railways Clauses Consolidation Act 1845 s 16. See note 5 supra. As to the undertaker's obligations where the Act does not apply see PARA 366 post.

14 *West Lancashire RDC v Lancashire and Yorkshire Rly Co* [1903] 2 KB 394.

15 *Railway Executive v West Riding of York County Council* [1949] Ch 423, [1949] 1 All ER 836, CA.

16 *Caledonian Rly Co v Ogilvy* (1856) 2 Macq 229, HL; *Wood v Stourbridge Rly Co* (1864) 16 CBNS 222; *Metropolitan Board of Works v McCarthy* (1874) LR 7 HL 243 at 256.

17 *Warden etc of Dover Harbour v London, Chatham and Dover Rly Co* (1861) 4 LT 387; *London and North Western Rly Co v Ogwen District Council* (1899) 80 LT 401; but see *Hertfordshire County Council v Great Eastern Rly Co* [1909] 2 KB 403, CA.

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363. Duty of undertakers to the public.

Where a special Act¹ requires a railway undertaker² to erect gates at a level crossing so that persons and vehicles using the highway are not endangered by passing trains, the undertaker's duty is owed only to those persons and vehicles and not to persons using the railway³.

The duty to erect and maintain gates imposed by the Railways Clauses Consolidation Act 1845⁴ is an absolute duty owed to all persons using the highway, whether or not they are lawfully there⁵, and the same duty is imposed⁶ where the highway crossed is not a public carriageway⁷. The duty of an undertaker in the case of an accommodation crossing⁸ is owed only to the owner or occupier of the adjoining close⁹.

The unexplained fact of a child being found injured at a place where a footpath crosses an unfenced portion of the line is sufficient evidence of negligence to support a finding against the railway undertaker¹⁰. An undertaker is bound to conduct its traffic with due care so as not to injure persons or property on the highway¹¹.

1 For the meaning of 'special Act' see PARA 291 note 2 ante.

2 As to railway undertakers see PARA 326 note 1 ante.

3 *Knapp v Railway Executive* [1949] 2 All ER 508, CA. See also *Gorris v Scott* (1874) LR 9 Exch 125.

4 See the Railways Clauses Consolidation Act 1845 s 47; and PARA 355 ante. Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante.

5 *Fawcett v York and North Midland Rly Co* (1851) 16 QB 610; *Dickinson v London and North Western Rly Co* (1866) Har & Ruth 399; *Charman v South Eastern Rly Co* (1888) 21 QBD 524, CA; *Parkinson v Garstang and Knott End Rly Co* [1910] 1 KB 615, DC.

6 I.e. under the Railways Clauses Consolidation Act 1845 s 61: see PARA 355 ante. See note 4 supra.

7 *Williams v Great Western Rly Co* (1874) LR 9 Exch 157.

8 I.e. a crossing made under the Railways Clauses Consolidation Act 1845 s 68: see PARA 326 et seq ante. See note 4 supra.

9 *Ricketts v East and West India Docks and Birmingham Junction Rly Co* (1852) 12 CB 160; *Manchester, Sheffield and Lincolnshire Rly Co v Wallis* (1854) 14 CB 213.

10 *Williams v Great Western Rly Co* (1874) LR 9 Exch 157. See also *Sneesby v Lancashire and Yorkshire Rly Co* (1875) 1 QBD 42, CA.

11 See *Manchester, South Junction and Altrincham Rly Co v Fullarton* (1863) 14 CBNS 54 (undertaker liable in nuisance).

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364. Gatekeeper's duty.

Before opening a level crossing gate for traffic on the road the gatekeeper is bound to see that the railway is safe to be crossed¹. An open gate is an invitation to cross², but failure to fasten the gates is not, even though it may have been the usual practice to fasten them³. A member of the public who finds a gate closed is not entitled to open it himself⁴, but if he is unreasonably delayed by the gatekeeper's negligence, he has a cause of action against the undertaker⁵. It is evidence of negligence if the gate is open when a train is approaching⁶, and it may be negligent of the gatekeeper to omit to give signals habitually given⁷.

1 *Lunt v London and North Western Rly Co* (1866) LR 1 QB 277. As to the effect of failure to appoint a gatekeeper see *Smith v London, Midland and Scottish Rly Co* 1948 SC 125, Ct of Sess.

2 *Stapley v London, Brighton and South Coast Rly Co* (1865) LR 1 Exch 21; *Mercer v South Eastern and Chatham Rly Co's Managing Committee* [1922] 2 KB 549.

3 *Skelton v London and North Western Rly Co* (1867) LR 2 CP 631.

4 *Wyatt v Great Western Rly Co* (1865) 6 B & S 709; *R v Strange* (1889) 16 Cox CC 552.

5 *Boyd v Great Northern Rly Co* [1895] 2 IR 555.

6 *North Eastern Rly Co v Wanless* (1874) LR 7 HL 12.

7 *Smith v South Eastern Rly Co* [1896] 1 QB 178, CA.

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365. Lighting of level crossings.

Where a railway undertaker has statutory power to maintain an obstruction to the highway, such as a level crossing, without qualification, there is no obligation to light it at night¹ and failure to light it is not evidence of negligence². However, statutory powers must be exercised with reasonable care³ and where a statute authorises the doing of something which would otherwise be unlawful, there is a duty to take reasonable care not to endanger others throughout the exercise of the powers, unless that duty is clearly excluded by the statute⁴. Thus, it is negligence to leave unlit a subway constructed under statutory powers in substitution for a level crossing⁵.

¹ See *London and North Eastern Rly Co v Frost* (1925, unreported); cited in *Law v Railway Executive* [1949] WN 172.

² *Great Central Rly Co v Hewlett* [1916] 2 AC 511, HL.

³ As to the manner of exercise of statutory powers see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 20 et seq.

⁴ *Fisher v Ruislip-Northwood UDC and Middlesex County Council* [1945] KB 584, [1945] 2 All ER 458, CA.

⁵ *Law v Railway Executive* [1949] WN 172. See also *R v Westfield Freezing Co Ltd* [1951] NZLR 456, NZCA; *Lloyds Bank Ltd v Railway Executive* [1952] 1 All ER 1248, CA.

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366. Extent of undertaker's common law obligations.

Where a special Act¹ passed before the Railways Clauses Consolidation Act 1845² authorises a railway undertaker merely to cross a highway on the level but is otherwise silent, at common law the undertaker is bound not only to construct such works as may be necessary to give the public full use of the highway but also to maintain those works in a proper condition for the use of the public³.

Where the special Act authorises a level crossing but does not require precautions to be taken to avoid danger, it may be assumed that the intention is that those who cross should take the risk incidental to that crossing, although the undertaker must do everything reasonably necessary on its part for the safety of persons lawfully using the crossing⁴. A person who crosses without looking to see for himself that no train is approaching cannot complain that he ought to have been given a warning in addition to any precautions which the special Act requires to be taken for his safety⁵. However, the undertaker's liability must always depend on the circumstances of the case. If there are circumstances which increase the danger of crossing, the undertaker must take additional precautions to meet the increased risk⁶. Thus, if the crossing is placed on a curve in the line⁷, or the view of the line is obstructed by a building⁸, or if, owing to an increase in the number of local inhabitants, the crossing is used more frequently⁹, or if the number of trains has increased, then reasonable additional precautions must be taken. For example, it may be necessary to instruct train drivers to whistle¹⁰.

A railway undertaker is not required to appoint a gatekeeper at an accommodation crossing¹¹ or at a crossing which is not over a public carriage road¹², to lock the gates¹³, or to instruct the driver to slow down, even when the view is obscured by fog¹⁴. Where a person goes onto the line without any express or implied invitation from the undertaker, in general the undertaker cannot be held responsible if that person is injured¹⁵. However, if passengers are regularly permitted to cross on the level even when the undertaker has provided another, safer, means of crossing, an invitation may be implied and some warning must be given of approaching trains¹⁶. A notice calling attention to the danger may not be sufficient warning¹⁷. A licence to cross the line by a private path does not include a licence to cross when the line is occupied, and the undertaker is not required to warn against such crossing¹⁸. If the relevant statutory provisions have been complied with, the mere fact of a body being found on the line at a footpath crossing is no evidence of negligence against the undertaker¹⁹. If the evidence is equally consistent with negligence on the part of the person injured as with negligence on the part of the railway authority, he will not be entitled to damages²⁰.

1 For the meaning of 'special Act' see PARA 291 note 2 ante.

2 As to the effect of special Acts passed before the Railways Clauses Consolidation Act 1845 see PARA 291 note 3 ante. As to the provisions of the Railways Clauses Consolidation Act 1845 relating to level crossings see PARAS 353-355 ante.

3 See *Hertfordshire County Council v Great Eastern Rly Co* [1909] 2 KB 403, CA. Compare the position under the Railways Clauses Consolidation Act 1845 s 16: see PARA 362 ante. Where the nature and extent of the obligations as to maintenance are expressly defined by the special Act, the common law obligations are superseded: see *Sharpness New Docks and Gloucester and Birmingham Navigation Co v A-G* [1915] AC 654 at 663, HL, per Viscount Haldane LC, at 664 per Lord Dunedin, and at 672 per Lord Parmoor.

- 4 See *Cliff v Midland Rly Co* (1870) LR 5 QB 258 at 264, applying the principle of *Bilbee v London, Brighton and South Coast Rly Co* (1865) 18 CBNS 584.
- 5 *Ellis v Great Western Rly Co* (1874) LR 9 CP 551, Ex Ch; *Smith v London, Midland and Scottish Rly Co* 1948 SC 125; *Ross v Railway Executive* 1948 SC (HL) 58, Ct of Sess; *Hemmens v British Transport Commission* (1955) 105 L Jo 411, Ct of Sess.
- 6 *Ford v London and South Western Rly Co* (1862) 2 F & F 730; *Bilbee v London, Brighton and South Coast Rly Co* (1865) 18 CBNS 584; *James v Great Western Rly Co* (1867) LR 2 CP 634n; *Gray v North-Eastern Rly Co and Washington Colliery Co* (1883) 48 LT 904, DC.
- 7 *Bilbee v London, Brighton and South Coast Rly Co* (1865) 18 CBNS 584; *Brown v Great Western Rly Co* (1885) 52 LT 622.
- 8 *Stubley v London and North Western Rly Co* (1865) LR 1 Exch 13; *Davey v London and South Western Rly Co* (1883) 12 QBD 70, CA.
- 9 *Smith v London Midland and Scottish Rly Co* 1948 SC 125, Ct of Sess.
- 10 *Lloyds Bank Ltd v Railway Executive* [1952] 1 All ER 1248, CA.
- 11 See further PARA 355 ante.
- 12 See further PARA 355 ante.
- 13 *Curtin v Great Southern and Western Rly Co of Ireland* (1887) 22 LR Ir 219.
- 14 *Knight v Great Western Rly Co* [1943] KB 105, [1942] 2 All ER 286; *Hazell v British Transport Commission* [1958] 1 All ER 116, [1958] 1 WLR 169; *Kemshead v British Transport Commission* [1958] 1 All ER 119, [1958] 1 WLR 173n, CA. See also *Nicholson v Lancashire and Yorkshire Rly Co* (1865) 3 H & C 534. However, in fog a person other than the train driver must take special precautions: *Hazell v British Transport Commission* supra.
- 15 *Falkiner v Great Southern and Western Rly Co of Ireland* (1871) IR 5 CL 213; *Wilby v Midland Rly Co* (1876) 35 LT 244.
- 16 *Barrett v Midland Rly Co* (1858) 1 F & F 361; *Rogers v Rhymney Rly Co* (1872) 26 LT 879; *Wright v Midland Rly Co* (1885) 1 TLR 406n, CA.
- 17 *Dublin, Wicklow and Wexford Rly Co v Slattery* (1878) 3 App Cas 1155, HL; *Crowther v Lancashire and Yorkshire Rly Co* (1889) 6 TLR 18, CA; *Coburn v Great Northern Rly Co* (1891) 8 TLR 31n, CA; *Dallas v Great Western Rly Co* (1893) 9 TLR 344, CA.
- 18 *French v Hills Plymouth Co* (1908) 24 TLR 644, DC. See also *Cliff v Midland Rly Co* (1870) LR 5 QB 258.
- 19 *Wakelin v London and South Western Rly Co* (1886) 12 App Cas 41, HL. If a man falls off his bicycle at a level crossing, that is not of itself evidence of negligence by the undertakers: *Smith v Port of London Authority* [1953] 1 Lloyd's Rep 6.
- 20 *Jones v Great Western Rly Co* (1930) 47 TLR 39, HL.

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(6) OFFENCES AND CIVIL PROCEEDINGS

(i) Offences Associated with Railway Operations

A. IMPROPER OPERATION OF ASSETS OR SERVICES

367. Operation of assets without authorisation or exemption under the Railways Act 1993.

Unless a person who acts as the operator¹ of a railway asset²:

- 1101 (1) is authorised to be the operator of that railway asset by a licence³; or
- 1102 (2) is exempt⁴ from the requirement to be so authorised⁵,

he is guilty of an offence⁶. However, no proceedings are to be instituted in England and Wales⁷ in respect of such an offence except by or on behalf of the Secretary of State⁸ or the Office of Rail Regulation⁹.

1 For the meaning of 'operator' see PARA 83 note 7 ante.

2 See the Railways Act 1993 s 6(1). For the meaning of 'railway asset' see PARA 83 note 7 ante. The provisions of s 6 (as amended) do not apply to a person who acts as the operator of a railway asset to the extent that the asset is operated for the purpose of providing services for which a European licence is required: s 6(1A) (added by the Railways Regulations 1998, SI 1998/1340, reg 21(2); the Railways Act 1993 s 6(1A) amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 3, Sch 1 Pt 1 para 3(1), (2)). For the meaning of 'European licence' see PARA 92 note 2 ante. As to the unlicensed provision of train services for which a European licence is required see PARA 368 post.

3 Railways Act 1993 s 6(1)(a). See note 2 supra. For the meaning of 'licence' see PARA 83 note 6 ante. As to applications under the Railways Act 1993 for licences authorising persons to be operators of railway assets see PARA 83 ante; as to conditions of licences see PARAS 84, 85 ante; and as to modifications of licences under the Railways Act 1993 and other enactments see PARA 87 et seq ante.

4 Ie by virtue of ibid s 7 (as amended) (see PARA 92 ante): see s 6(1)(b).

5 Ibid s 6(1)(b). See note 2 supra.

6 Ibid s 6(1). Any person who is guilty of an offence under s 6 (as amended) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum (s 6(3)(a)); and (2) on conviction on indictment, to a fine (s 6(3)(b)). See note 2 supra.

The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. 'Prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141. As to offences committed by bodies corporate see the Railways Act 1993 s 147; and PARA 428 post.

7 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

8 As to the Secretary of State see PARA 35 ante; and as to the general duties of the Secretary of State, being the objectives at which he must aim when exercising, or deciding not to exercise, his functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), see s 4 (as amended); and PARA 33 ante.

9 Ibid s 6(4) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a)). See note 2 supra. As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the general duties of the Office of Rail Regulation, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (as amended), see s 4 (as amended); and PARA 33 ante.

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368. Provision of train services without authorisation by European licence.

Where a person is a railway undertaking¹, that person must not provide a train service in Great Britain² unless authorised to do so by a European licence³ which is appropriate for that train service⁴; and any person who provides such a service without such a licence is guilty of an offence⁵. However, no proceedings are to be instituted in England or Wales⁶ in respect of such an offence⁷ except by or on behalf of the Office of Rail Regulation⁸.

1 Ie to which the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 apply: see reg 5(1). As to the application and scope of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 93 note 1 ante. For the meaning of 'railway undertaking' for these purposes see PARA 93 note 1 ante.

2 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

3 For the meaning of 'European licence' for these purposes see PARA 93 note 3 ante.

4 See the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 5(1); and PARA 93 ante. For the meaning of 'train service' for these purposes see PARA 93 note 1 ante. As to the related requirement for providers of a train service in Great Britain to hold a valid Statement of National Regulatory Provisions ('SNRP') see PARA 98 ante; and as to the related offence of providing a train service in Great Britain without holding such a statement see PARA 369 post. As to licences authorising persons to be operators of railway assets for which a European licence is not required see PARA 83 ante; and as to the related offence of operating assets without such authorisation (or an exemption) see PARA 367 ante.

5 Ibid reg 5(1). Any person who is guilty of such an offence as set out in the text is liable, on summary conviction, to a fine not exceeding the statutory maximum (reg 5(2)(a)) and, on conviction on indictment, to a fine (reg 5(2)(b)). As to the statutory maximum see PARA 367 note 6 ante. As to liability for offences under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 429 post.

6 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

7 Ie an offence under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 5.

8 Ibid regs 2(1), 5(3). For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

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369. Provision of train services without valid SNRP.

Where a person is a railway undertaking¹, that person may not provide train services² in Great Britain³ unless⁴ holding a valid Statement of National Regulatory Provisions ('SNRP')⁵; and any person who provides such a service without holding such a statement is guilty of an offence⁶. However, no proceedings are to be instituted in England or Wales⁷ in respect of such an offence⁸ except by or on behalf of the Office of Rail Regulation⁹.

1 In relation to which the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, apply: see reg 9(1). As to the application and scope of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 93 note 1 ante. For the meaning of 'railway undertaking' for these purposes see PARA 93 note 1 ante.

2 For the meaning of 'train service' for these purposes see PARA 93 note 1 ante.

3 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

4 In addition to being authorised to do so by a European licence: see the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 9(1). For the meaning of 'European licence' for these purposes see PARA 93 note 3 ante. As to the requirement for authorisation by European licence see PARA 93 ante; and as to the related offence of providing a train service in Great Britain without such authorisation see PARA 368 ante.

5 See *ibid* reg 9(1); and PARA 98 ante. For the meaning of 'SNRP' see PARA 98 note 5 ante.

6 *Ibid* reg 9(2). Any person who is guilty of such an offence as set out in the text is liable, on summary conviction, to a fine not exceeding the statutory maximum (reg 9(3)(a)) and, on conviction on indictment, to a fine (reg 9(3)(b)). As to the statutory maximum see PARA 367 note 6 ante. As to liability for offences under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 429 post.

7 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

8 Is an offence under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 9.

9 *Ibid* regs 2(1), 9(4). For the meaning of 'Office of Rail Regulation' see PARA 94 note 1 ante.

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370. Failure to send new or amended access agreement to Office of Rail Regulation.

Where an access agreement¹ is entered into or amended, the facility owner² or installation owner³ concerned must send a copy of the access agreement or amendment to the Office of Rail Regulation⁴ not later than 14 days after the date on which the access agreement is entered into or the amendment is made, as the case may be⁵. A person who fails to comply with this requirement⁶ is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷.

1 For the meaning of 'access agreement' see PARA 105 note 2 ante.

2 For the meaning of 'facility owner' see PARA 102 note 1 ante.

3 For the meaning of 'installation owner' see PARA 104 note 3 ante.

4 The Office of Rail Regulation has general duties, being the objectives at which it must aim when exercising, or deciding not to exercise, its functions under the Railways Act 1993 Pt I (ss 4-83) (as amended), which are set out in s 4 (as amended): see PARA 33 ante. As to the Office of Rail Regulation generally see PARA 49 et seq ante.

5 See *ibid* s 72(5) (as amended); and PARA 56 ante.

6 I.e. a person who fails to comply with *ibid* s 72(5) (as amended) (see the text and notes 1-5 *supra*): see s 72(6). As to offences committed by bodies corporate see s 147; and PARA 428 post.

7 *Ibid* s 72(6).

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

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B. CONTRAVENTIONS OF SAFETY ETC REQUIREMENTS

371. Contravention of health and safety provisions.

The following offences that relate to activities on the railway occur in provisions which have been made under (and are therefore enforceable under) Part I of the Health and Safety at Work etc Act 1974¹:

- 1103 (1) failure to comply with an order which is in force under the Level Crossings Act 1983 in relation to a level crossing²;
- 1104 (2) failure to prevent unauthorised access to the railway infrastructure³;
- 1105 (3) failure to provide or to maintain: (a) an emergency communication system for passengers⁴; or (b) a suitable and sufficient braking system for vehicles⁵;
- 1106 (4) failure to provide procedures or (where applicable) to provide and maintain equipment: (a) to prevent collisions and derailments⁶; or (b) to prevent any person at work on a transport system from being struck by, or falling from, a moving vehicle⁷;
- 1107 (5) failure to provide the required train protection system⁸;
- 1108 (6) failure to comply with the prohibition on the operation of certain rolling stock on a railway⁹;
- 1109 (7) failure to undertake established safety verification procedures before new or altered vehicles and infrastructure are introduced¹⁰.

Part I of the Health and Safety at Work etc Act 1974 also has effect as if the following provisions (which also make provision for offences for contravention) were existing statutory provisions within the meaning of Part I of that Act¹¹:

- 1110 (i) the Highway (Railway Crossings) Act 1839¹²;
- 1111 (ii) the Railway Regulation Act 1842¹³;
- 1112 (iii) the Road and Rail Traffic Act 1933¹⁴;
- 1113 (iv) the Transport Act 1968¹⁵;
- 1114 (v) the Level Crossings Act 1983¹⁶;
- 1115 (vi) the Transport and Works Act 1992¹⁷.

Penalties may be imposed also under the provisions of the Railways Clauses Consolidation Act 1845 governing the approval and operation of privately owned carriages and engines which are given access to the railway¹⁸.

¹ ie the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303). As to the extension to railways of certain provisions relating to health and safety at work see PARA 194 et seq ante. As to offences arising from the contravention of any health or safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 852 et seq. As to civil liability that may arise from any such breach see PARA 421 post.

² Head (1) in the text refers to the requirement contained in the Level Crossings Regulations 1997, SI 1997/487, reg 3 (see PARA 356 ante) which is made in relation to orders made under the Level Crossings Act 1983 s 1 (as amended) (see PARA 356 ante). The Office of Rail Regulation is responsible for the enforcement of

such orders: see the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 4(4); and PARA 195 ante.

3 Head (2) in the text refers to the requirement contained in the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 3 (see PARA 267 ante).

4 Head (3)(a) in the text refers to the requirement contained in *ibid* reg 4 (see PARA 268 ante).

5 Head (3)(b) in the text refers to the requirement contained in *ibid* reg 6 (see PARA 270 ante).

6 Head (4)(a) in the text refers to the requirement contained in *ibid* reg 5 (see PARA 269 ante).

7 Head (4)(b) in the text refers to the requirement contained in *ibid* reg 7 (see PARA 271 ante).

8 Head (5) in the text refers to the requirement contained in the Railway Safety Regulations 1999, SI 1999/2244, reg 3 (see PARA 205 ante).

9 Head (6) in the text refers to the requirement contained in *ibid* reg 4 (Mark I rolling stock: see PARA 206 ante) or reg 5 (rolling stock with hinged doors: see PARA 206 ante).

10 Head (7) in the text refers to the requirement contained in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 31(1) as it refers to the requirements of regs 5(4), 6(4) (see PARA 236 ante): see reg 31(1). As to liability for such offences see PARA 432 post.

11 *Ie* within the meaning of the Health and Safety at Work etc Act 1974 Pt I (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302): see the Railways Act 1993 s 117(1); and PARA 194 ante.

12 See PARA 355 ante.

13 *Ie* the Railway Regulation Act 1842 s 9 (see PARA 355 ante), s 10 (repealed).

14 *Ie* the Road and Rail Traffic Act 1933 s 42 (as amended): see PARA 355 ante.

15 *Ie* the Transport Act 1968 s 124 (repealed in relation to England and Wales), s 125 (repealed).

16 See head (1) in the text; and PARA 356 ante.

17 *Ie* the Transport and Works Act 1992 ss 41-45 (ss 42-44 repealed). At the date at which this volume states the law, the only regulations made pursuant to s 41 (as amended) (*ie* the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157) have been revoked by the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as amended) and the purpose of the former regulations has been superseded by a comprehensive regime of safety verification and safety management systems provided for under the latter regulations: see PARA 231 ante. As to contraventions of the Transport and Works Act 1992 s 45 (as amended) see PARA 372 post.

18 See the Railways Clauses Consolidation Act 1845 ss 115-121 (as amended); and PARA 203 ante.

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372. Contravention of direction imposing limitation on speeds or weights.

Directions may impose maximum speeds at which vehicles may travel on a system or maximum weights that may be transmitted to the rails comprised in such a system¹. If such a direction is contravened in the course of the provision of transport services by the person to whom the direction was given, that person is guilty of an offence².

¹ See the Transport and Works Act 1992 s 45 (as amended); and PARA 208 ante.

² Ibid s 45(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 45(6). As to the standard scale see PARA 370 note 7 ante.

No proceedings may be instituted in England and Wales in respect of an offence under Pt II (ss 26-59) (as amended), other than an offence under s 41 (see PARA 371 ante) or s 43 (repealed) except by or with the consent of the Secretary of State or the Director of Public Prosecutions: s 58 (amended by the Railways Act 1993 s 117(5)(b)). As to the Secretary of State see PARA 35 ante. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq. For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

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373. Contravention of direction requiring insurance against liability in respect of death or personal injury.

Where a direction is given, which requires the person to whom it is given to ensure that there are at all times in force such policies of insurance against liability in respect of death or personal injury¹, and that direction is contravened, the person to whom the direction was given is guilty of an offence².

¹ See under the Transport and Works Act 1992 s 46: see s 46(1); and PARA 265 ante.

² Ibid s 46(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 46(5). As to the institution of proceedings in England and Wales in respect of an offence under Pt II (ss 26-59) (as amended) see PARA 372 note 2 ante. As to the standard scale see PARA 370 note 7 ante.

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374. Failure to conform with rail vehicle accessibility regulations.

Until a day to be appointed¹, if a regulated rail vehicle which does not conform with any provision of the rail vehicle accessibility regulations with which it is required to conform² is used for carriage, the operator³ of the vehicle is guilty of an offence⁴.

¹ As from a day to be appointed under the Disability Discrimination Act 2005 s 20(3), the Disability Discrimination Act 1995 s 46(3), (4) is repealed by the Disability Discrimination Act 2005 Sch 1 paras 1, 27(a), Sch 2. However, at the date at which this volume states the law, no such day had been appointed.

As from a day to be appointed under the Disability Discrimination Act 2005 s 20(3), the Secretary of State may make rail vehicle accessibility regulations so as to secure that on and after 1 January 2020 every rail vehicle is a regulated rail vehicle, although without affecting the powers conferred by the Disability Discrimination Act 1995 s 46(5) (see PARA 261 ante) or s 47(1) (as amended) (see PARA 262 ante) or s 67(2) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 509): s 46(4A) (prospectively added by the Disability Discrimination Act 2005 s 6(1)). At the date at which this volume states the law, no such day had been appointed. For the meaning of 'rail vehicle accessibility regulations' see PARA 261 note 3 ante; and for the meaning of 'regulated rail vehicle' for these purposes see PARA 261 note 6 ante.

² ie any provision of the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456 (as amended).

³ For the meaning of 'operator' for these purposes see PARA 261 note 25 ante.

⁴ Disability Discrimination Act 1995 s 46(3) (prospectively repealed: see note 1 supra). A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale: s 46(4) (prospectively repealed: see note 1 supra). As to the standard scale see PARA 370 note 7 ante.

UPDATE

374 Failure to conform with rail vehicle accessibility regulations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--Day now appointed: SI 2010/341.

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C. CONTRAVENTIONS OF ACCIDENT ETC REQUIREMENTS

375. Contravention of direction requiring railway industry to investigate accident or incident.

Where a direction is given, which requires the person who manages or controls railway property¹ on which certain railway accidents or incidents² take place (or railway property which is involved in such an accident or incident) to investigate the accident or incident³, and that person fails to comply with the direction, the person to whom the direction applies is guilty of an offence⁴.

1 For the meanings of 'railway' and 'railway property' for these purposes see PARA 273 note 3 ante.

2 As to references to a railway accident or incident for these purposes see PARA 273 note 3 ante.

3 Ie under the Railways and Transport Safety Act 2003 s 10: see s 10(3); and PARA 278 ante.

4 Ibid s 10(3). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine: s 10(4). In such proceedings, it is not necessary for the Chief Inspector of Rail Accidents to prove that the defendant was aware of the direction: s 10(6). As to the statutory maximum see PARA 367 note 6 ante. As to the Chief Inspector of Rail Accidents see PARA 275 et seq ante.

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376. Offences associated with accident investigation and reporting.

A person who is guilty of an offence under the following provisions, which govern accident investigation and reporting on the railways¹, namely:

- 1116 (1) a railway industry body which fails to notify the Rail Accident Investigation Branch of an accident or incident²;
- 1117 (2) a person who fails to comply with the requirements that only an inspector or a duly appointed person may have access to the site of an accident or incident or may remove from or interfere with (or cause to be removed from or interfered with) anything at the site of an accident or incident (or so give consent), while an investigation is still pending³;
- 1118 (3) an owner of railway property or a railway industry body (or a manufacturer or supplier of equipment, components or services to an owner of railway property or to a railway industry body) who: (a) fails to preserve all evidence over which he has control while an investigation is still pending⁴; (b) moves or uses evidence relating to an accident or incident other than for an authorised purpose⁵; (c) fails to make and retain a record as required⁶; (d) discloses information that he obtains during an analysis or examination⁷,

is liable, on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding £20,000, or both⁸, and, on conviction on indictment, to imprisonment for a term not exceeding six months, or a fine, or both⁹.

A person who fails to assist an inspector when required to do so¹⁰ is guilty of an offence¹¹ and liable, on summary conviction, to a fine not exceeding £20,000¹² and, on conviction on indictment, to a fine¹³.

A person who: (i) discloses evidence or information¹⁴ obtained during the course of a railway investigation¹⁵; or (ii) fails to comply with a requirement imposed on him by the safety authority¹⁶ following a recommendation addressed to it by the Rail Accident Investigation Branch¹⁷; or (iii) discloses the contents of a report¹⁸ sent to him by the Branch for the purpose of making representations before its publication¹⁹, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale²⁰.

1 Ie the Railways (Accident Investigation and Reporting) Regulations 2005, SI 2005/1992 (as amended) (see PARA 273 et seq ante).

2 See *ibid* reg 4(12); and PARA 273 ante.

3 See *ibid* reg 7(6); and PARA 277 ante.

4 See *ibid* reg 8(7); and PARA 277 ante.

5 See *ibid* reg 9(13), (14); and PARA 277 ante.

6 See *ibid* reg 9(15); and PARA 277 ante.

7 See *ibid* reg 9(16); and PARA 277 ante.

- 8 Ibid reg 16(1)(a).
- 9 Ibid reg 16(1)(b).
- 10 Ie in accordance with ibid reg 6(4): see reg 6(7); and PARA 277 ante.
- 11 See reg 6(7); and PARA 277 ante.
- 12 Ibid reg 16(2)(a).
- 13 Ibid reg 16(2)(b).
- 14 Ie in contravention of ibid reg 10(2), (4), (8): see reg 10(9); and PARA 277 ante.
- 15 See reg 10(9); and PARA 277 ante.
- 16 Ie imposed in accordance with ibid reg 12(4): see reg 12(5); and PARA 277 ante.
- 17 See reg 12(5); and PARA 277 ante.
- 18 Ie in contravention of ibid reg 13(5): see reg 13(6); and PARA 277 ante.
- 19 See reg 13(6); and PARA 277 ante.
- 20 Ibid reg 16(3). As to the standard scale see PARA 370 note 7 ante.

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D. OFFENCES BY RAILWAY EMPLOYEES INVOLVING DRINK OR DRUGS

377. Principal offences involving drink or drugs.

If a person works¹ on an applicable transport system²:

- 1119 (1) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle³; or
- 1120 (2) in a maintenance capacity⁴ or as a supervisor of, or look-out for, persons working in a maintenance capacity⁵,

when he is unfit to carry out that work⁶ through drink or drugs⁷, he is guilty of an offence⁸.

If a person works on an applicable transport system:

- 1121 (a) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle⁹; or
- 1122 (b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in a maintenance capacity¹⁰,

after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit¹¹, he is guilty of an offence¹².

If a person commits such an offence¹³, the responsible operator¹⁴ is also guilty of an offence¹⁵. However, no such offence is committed by the responsible operator¹⁶ if he has exercised all due diligence to prevent the commission on the transport system of any such offence¹⁷.

If a person commits such an offence¹⁸ in the course of his employment with a person other than the responsible operator, his employer is (without prejudice to any liability of that operator¹⁹) also guilty of an offence²⁰. However, no such offence is committed by that employer²¹ if he has exercised all due diligence to prevent the commission on the transport system by any of his employees of any offence involving drink or drugs²².

1 It is immaterial whether a person who works on a transport system does so in the course of his employment, under a contract for services, voluntarily or otherwise: Transport and Works Act 1992 s 38(3).

2 I.e. a railway, a tramway, or a system which uses another mode of guided transport and is specified for the purposes of *ibid* Pt II Ch I (ss 26-39) (as amended) by an order made by the Secretary of State (s 26(1)) but only if such a system is used (or intended to be used) wholly or partly for the carriage of members of the public (s 26(2)). The power to make orders under s 26 is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 26(3). The Secretary of State, in exercise of the powers conferred by s 26(3), has made the Transport (Guided Systems) Order 1992, SI 1992/2044 (amended by SI 2005/2290) in relation to monorail systems and track-based systems with side guidance. As to the Secretary of State see *PARA 35 ante*.

3 Transport and Works Act 1992 s 27(1)(a). As to the meaning of 'vehicle' for these purposes see *PARA 302 note 4 ante*.

4 For these purposes, a person works on a transport system in a maintenance capacity if his work on the system involves maintenance, repair or alteration of: (1) the permanent way or other means of guiding or

supporting vehicles (ibid s 27(3)(a)); (2) signals or any other means of controlling the movement of vehicles (s 27(3)(b)); or (3) any means of supplying electricity to vehicles or to the means of guiding or supporting vehicles (s 27(3)(c)); or if his work involves coupling or uncoupling vehicles or checking that they are working properly before they are used on any occasion (s 27(3)).

5 Ibid s 27(1)(b).

6 For these purposes, a person is taken to be unfit to carry out any work if his ability to carry out that work properly is for the time being impaired: ibid s 27(4).

7 'Drug' includes any intoxicant other than alcohol: ibid s 38(1).

8 Ibid s 27(1). A person guilty of an offence under s 27 is liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both: s 36(1). As to the institution of proceedings in England and Wales in respect of an offence under Pt II (ss 26-59) (as amended) see PARA 372 note 2 ante. As to the standard scale see PARA 370 note 7 ante. As to constables' powers to require breath tests and specimens for analysis for the purposes of investigating a suspected offence under s 27 see PARA 378 et seq post; and as to the use of such specimens in proceedings for such offences see PARA 383 post.

9 Ibid s 27(2)(a).

10 Ibid s 27(2)(b).

11 For these purposes, 'prescribed limit' means, as the case may require: (1) 35 microgrammes of alcohol in 100 millilitres of breath; (2) 80 milligrammes of alcohol in 100 millilitres of blood; or (3) 107 milligrammes of alcohol in 100 millilitres of urine, or such other proportion as may be prescribed by regulations made by the Secretary of State: ibid s 38(2). The power to make regulations under s 38(2) is exercisable by statutory instrument; and no such regulations may be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament: s 38(6). It is the duty of the Secretary of State, before he makes regulations under s 38(2), to consult such organisations as he considers to be representative of persons who are to be affected by the regulations: s 57. At the date at which this volume states the law no such regulations had been made.

12 Ibid s 27(2). See note 8 supra.

13 It is an offence under ibid s 27 (see the text and notes 1-12 supra): see s 28(1).

14 For these purposes, 'responsible operator' means: (1) in a case where the transport system on which the offence under ibid s 27 (see the text and notes 1-12 supra) is committed has only one operator, that operator (s 28(2)(a)); and (2) in a case where the transport system on which the offence under s 27 is committed has more than one operator, whichever of them is responsible for the work giving rise to the offence (s 28(2)(b)). For the meaning of 'operator' for these purposes see PARA 357 note 5 ante.

15 Ibid s 28(1). A person guilty of an offence under s 28 is liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both: s 36(1). Where an offence under Pt II (as amended) committed by a body corporate is committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, he as well as the body corporate is guilty of the offence: s 59(1). For these purposes 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: s 59(2).

16 It is under ibid s 28(1) (see the text and notes 13-15 supra): see s 28(3).

17 Ibid s 28(3).

18 It is an offence under ibid s 27 (see the text and notes 1-12 supra): see s 28(4).

19 It is under ibid s 28(1) (see the text and notes 13-15 supra): see s 28(4).

20 Ibid s 28(4).

21 It is under ibid s 28(4) (see the text and notes 18-20 supra): see s 28(5).

22 Ibid s 28(5). The text refers to an offence under s 27 (see the text and notes 1-12 supra): see s 28(5).

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378. Constables' powers to require breath tests.

Where a constable¹ in uniform has reasonable cause to suspect: (1) that a person working on an applicable transport system² in one of the specified capacities³ has alcohol in his body⁴; or (2) that such a person has been working on such a transport system⁵ with alcohol in his body and still has alcohol in his body⁶, he may require that person to provide a specimen of breath for a breath test⁷.

Where an accident or dangerous incident⁸ occurs on an applicable transport system⁹, a constable in uniform may require a person to provide a specimen of breath for a breath test if he has reasonable cause to suspect that: (a) at the time of the accident or incident that person was working on the transport system in one of the specified capacities¹⁰; and (b) an act or omission of that person while he was so working may have been a cause of the accident or incident¹¹.

A person may be so required¹² to provide a specimen either at or near the place where the requirement is made or, if the requirement is made in relation to an accident or dangerous incident¹³ and the constable making the requirement thinks fit, at a police station specified by the constable¹⁴. A person who, without reasonable excuse, fails¹⁵ to provide a specimen of breath when required to do so¹⁶ is guilty of an offence¹⁷.

A constable may arrest a person without warrant¹⁸ if: (i) as a result of such a breath test¹⁹ he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit²⁰; or (ii) that person has failed to provide a specimen of breath for a breath test when required to do so²¹ and the constable has reasonable cause to suspect that he has alcohol in his body²². A constable may, for the purpose of requiring a person to provide a specimen of breath²³ in the case of an accident which the constable has reasonable cause to suspect involved the death of or injury to another person, or for the purpose of arresting a person in such a case under head (i) or head (ii) above, enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be²⁴.

1 Ie any person holding the office of constable: see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to the British Transport Police see PARA 281 et seq ante.

2 Ie a transport system to which the Transport and Works Act 1992 Pt II Ch I (ss 26-39) (as amended) applies: see s 29(1)(a). As to applicable transport systems for these purposes see PARA 377 note 2 ante; and as to when a person is working on such a transport system see PARA 377 note 1 ante.

3 Ie in any capacity mentioned in ibid s 27(1), (2) (see PARA 377 ante): see s 29(1)(a).

4 Ibid s 29(1)(a).

5 Ie that a person has been working on a transport system to which ibid Pt II Ch I (as amended) applies in any capacity mentioned in s 27(1), (2) (see PARA 377 ante): see s 29(1)(b).

6 Ibid s 29(1)(b).

7 Ibid s 29(1). For the purposes of Pt II Ch I (as amended), a person does not provide a specimen of breath for a breath test or for analysis unless the specimen: (1) is sufficient to enable the test or the analysis to be carried out (s 38(4)(a)); and (2) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved (s 38(4)(b)). 'Breath test' means a preliminary test for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the proportion of alcohol

in a person's breath or blood is likely to exceed the prescribed limit: s 38(1). For the meaning of 'prescribed limit' for these purposes see PARA 377 note 11 ante. As to the Secretary of State see PARA 35 ante.

8 For these purposes, 'dangerous incident' means an incident which in the constable's opinion involved a danger of death or personal injury: *ibid* s 29(3).

9 *Ie* a transport system to which *ibid* Pt II Ch I (as amended) applies: see s 29(2)(a); and see note 2 *supra*.

10 *Ibid* s 29(2)(a). The text refers to a person working on the transport system in any capacity mentioned in s 27(1), (2) (see PARA 377 ante): see s 29(2)(a).

11 *Ibid* s 29(2)(b).

12 *Ie* under *ibid* s 29(1) or s 29(2) (see the text and notes 1-11 *supra*): see s 29(4).

13 *Ie* if the requirement is made under *ibid* s 29(2) (see the text and notes 8-11 *supra*): see s 29(4).

14 *Ibid* s 29(4).

15 For these purposes, 'fail' includes refuse: *ibid* s 38(1).

16 *Ie* in pursuance of *ibid* s 29: see s 29(5).

17 *Ibid* s 29(5). A person guilty of an offence under s 29(5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 36(2). As to the institution of proceedings in England and Wales in respect of an offence under Pt II (ss 26-59) (as amended) see PARA 372 note 2 ante. As to the standard scale see PARA 370 note 7 ante.

18 As to the protection of hospital patients see PARA 382 post. As to constables' powers of arrest without warrant generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 924.

19 *Ie* a breath test under the Transport and Works Act 1992 s 29 (see the text and notes 1-17 *supra*): see s 30(2)(a).

20 *Ibid* s 30(2)(a).

21 *Ie* in pursuance of *ibid* s 29 (see the text and notes 1-17 *supra*): see s 30(2)(b).

22 *Ibid* s 30(2)(b).

23 *Ie* under *ibid* s 29(2) (see the text and notes 8-11 *supra*): see s 30(4)(a).

24 *Ibid* s 30(4).

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379. Constables' powers to require specimens for analysis.

In the course of an investigation into whether a person working on a transport system has committed an offence involving drink or drugs¹, a constable² may require him: (1) to provide two specimens of breath³ for analysis by means of a device of a type approved by the Secretary of State⁴; or (2) to provide a specimen of blood⁵ or urine for a laboratory test⁶.

For these purposes, a requirement to provide specimens of breath must only be made at a police station⁷. A requirement to provide a specimen of blood or urine must only be made at a police station or at a hospital⁸; and it must not be made at a police station except in the following circumstances:

- 1123 (a) if the constable making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required⁹;
- 1124 (b) at the time the requirement is made, either a device (or reliable device) of the type mentioned in head (1) above is not available at the police station or it is for any other reason not practicable to use such a device there¹⁰;
- 1125 (c) a device of the type mentioned in head (1) above has been used at the police station but the constable who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned; or¹¹
- 1126 (d) the suspected offence involves a person working on a transport system who is unfit to carry out that work through drink or drugs¹² and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to a drug¹³.

A person may be so required to provide a specimen of blood or urine¹⁴ notwithstanding that he has already provided or been required to provide two specimens of breath¹⁵. If the provision of a specimen other than a specimen of breath may be so required¹⁶, the question whether it is to be a specimen of blood or a specimen of urine (and, in the case of a specimen of blood, the question who is to be asked to take it) is to be decided¹⁷ by the constable making the requirement¹⁸. On requiring a person to provide a specimen, a constable must warn him that a failure to provide it may render him liable to prosecution¹⁹.

A person who, without reasonable excuse, fails²⁰ to provide a specimen when required to do so²¹ is guilty of an offence²².

1 le an offence under the Transport and Works Act 1992 s 27 (see PARA 377 ante): see s 31(1). As to the meaning of 'drug' see PARA 377 note 7 ante. As to when a person is working on a transport system see PARA 377 note 1 ante.

2 le any person holding the office of constable: see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to the British Transport Police see PARA 281 et seq ante.

3 As to when a person provides a specimen of breath see PARA 378 note 7 ante. As to choice of specimens of breath see PARA 381 post.

4 Transport and Works Act 1992 s 31(1)(a). As to the Secretary of State see PARA 35 ante.

5 For the purposes of *ibid* Pt II Ch I (ss 26-39) (as amended), a person provides a specimen of blood if and only if: (1) he consents to the taking of such a specimen from him (s 38(5)(a) (s 38 substituted by the Police Reform Act 2002 s 58(11))); and (2) the specimen is taken from him by a medical practitioner or, if it is taken in a police station, either by a medical practitioner or by a registered health care professional (Transport and Works Act 1992 s 38(5)(b) (as so substituted)). As to the power to take specimens of blood from persons incapable of consenting see *PARA 380 post*.

For these purposes, 'registered health care professional' means a person (other than a medical practitioner) who is: (a) a registered nurse (s 38(2A)(a) (s 38(2A)-(2C) added by the Police Reform Act 2002 s 58(10))); or (b) a registered member of a health care profession which is designated for these purposes by an order made by the Secretary of State (Transport and Works Act 1992 s 38(2A)(b) (as so added)). A health care profession is any profession mentioned in the Health Act 1999 s 60(2) (see *MEDICAL PROFESSIONS* vol 30(1) (Reissue) *PARA 291*) other than the profession of practising medicine and the profession of nursing: Transport and Works Act 1992 s 38(2B) (as so added). An order under s 38(2A)(b) (as added) must be made by statutory instrument; and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 38(2C) (as so added). In exercise of the powers conferred upon him by the definition of 'registered health care professional' in s 38(2A) (as added), the Secretary of State has made the Registered Health Care Profession (Designation No 2) Order 2003, SI 2003/2462 (designating the profession of paramedics).

6 Transport and Works Act 1992 s 31(1)(b).

7 *Ibid* s 31(2).

8 *Ibid* s 31(3). 'Hospital' means an institution which provides medical or surgical treatment for in-patients or out-patients: s 38(1).

9 *Ibid* s 31(4)(a).

10 *Ibid* s 31(4)(b) (amended by the Criminal Procedure and Investigations Act 1996 s 80, Sch 5(5)).

11 Transport and Works Act 1992 s 31(4)(bb) (added by the Criminal Procedure and Investigations Act 1996 s 63(2), (3)).

12 *le* an offence under the Transport and Works Act 1992 s 27(1) (see *PARA 377 ante*): see s 31(4)(c).

13 *Ibid* s 31(4)(c).

14 *le* in pursuance of *ibid* s 31 (as amended): see s 31(5).

15 *Ibid* s 31(5). See also *PARA 381 post*.

16 *le* in pursuance of *ibid* s 31 (as amended): see s 31(6) (as amended: see note 18 *infra*).

17 *le* subject to *ibid* s 31(6A) (as added): see s 31(6) (as amended: see note 18 *infra*). Accordingly, where a constable decides for the purposes of s 31(6) (as amended) to require the provision of a specimen of blood, there is no requirement to provide such a specimen (s 31(6A) (added by the Police Reform Act 2002 s 58(2))):

259 (1) if the medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken (Transport and Works Act 1992 s 31(6A)(a) (as so added)); or

260 (2) if the registered health care professional who is asked to take it is of that opinion and there is no contrary opinion from a medical practitioner (s 31(6A)(b) (as so added)),

and, where by virtue of s 31(6A) (as added) there can be no requirement to provide a specimen of blood, the constable may require a specimen of urine instead (s 31(6A) (as so added)).

For these purposes, 'health care professional' means a person (other than a medical practitioner) who is: (a) a registered nurse (s 31(9A)(a) (s 31(9A)-(9C) added by the Police Reform Act 2002 s 58(3))); or (b) a registered member of a health care profession which is designated for these purposes by an order made by the Secretary of State (Transport and Works Act 1992 s 31(9A)(b) (as so added)). A health care profession is any profession mentioned in the Health Act 1999 s 60(2) (see *MEDICAL PROFESSIONS* vol 30(1) (Reissue) *PARA 291*) other than the profession of practising medicine and the profession of nursing: Transport and Works Act 1992 s 31(9B) (as so added). An order under s 31(9A)(b) (as added) must be made by statutory instrument; and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 31(9C) (as so added). In exercise of the powers conferred upon him by the definition of 'registered health care professional' in s 31(9A) (as added), the Secretary of State has made the Registered Health Care Profession (Designation No 2) Order 2003, SI 2003/2462 (designating the profession of paramedics).

18 Transport and Works Act 1992 s 31(6) (amended by the Police Reform Act 2002 s 58(1)). A specimen of urine must be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine: Transport and Works Act 1992 s 31(7).

19 Ibid s 31(9). As to the protection of hospital patients see PARA 382 post.

20 As to the meaning of 'fail' see PARA 378 note 15 ante.

21 Ie in pursuance of the Transport and Works Act 1992 s 31 (as amended): see s 31(8).

22 Ibid s 31(8). A person guilty of an offence under s 31 (as amended) is liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both: s 36(1). As to the institution of proceedings in England and Wales in respect of an offence under Pt II (ss 26-59) (as amended) see PARA 372 note 2 ante. As to the standard scale see PARA 370 note 7 ante.

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380. Constables' powers to take specimens of blood from persons incapable of consenting.

A constable¹ may make a request to a medical practitioner for him to take a specimen of blood from a person (the 'person concerned') irrespective of whether that person consents if²:

- 1127 (1) that person is a person from whom the constable would³ be entitled⁴ to require the provision of a specimen of blood for a laboratory test⁵;
- 1128 (2) it appears to that constable that that person has been involved in: (a) an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter⁶; or (b) a dangerous incident⁷ that constitutes or is comprised in that matter or those circumstances⁸;
- 1129 (3) it appears to that constable that that person is or may be incapable (whether or not he has purported to do so) of giving a valid consent to the taking of a specimen of blood⁹; and
- 1130 (4) it appears to that constable that that person's incapacity is attributable to medical reasons¹⁰.

Such a request¹¹ must not be made to a medical practitioner who for the time being has any responsibility (apart from the request) for the clinical care of the person concerned¹², and must not be made to a medical practitioner other than a police medical practitioner¹³ unless it is not reasonably practicable for the request to be made to a police medical practitioner¹⁴, or unless it is not reasonably practicable for such a medical practitioner (assuming him to be willing to do so) to take the specimen¹⁵. It is lawful for a medical practitioner to whom such a request is made, if he thinks fit, to take a specimen of blood from the person concerned irrespective of whether that person consents¹⁶, and to provide the sample to a constable¹⁷.

If a specimen of blood is taken in pursuance of such a request to a medical practitioner to take such a specimen irrespective of whether the person concerned consents¹⁸, the specimen must not be subjected to a laboratory test unless the person from whom it was taken: (i) has been informed that it was taken¹⁹; (ii) has been required by a constable to give his permission for a laboratory test of the specimen²⁰; and (iii) has given his permission²¹. On requiring a person to give his permission, a constable must warn that person that a failure to give the permission may render him liable to prosecution²². A person who, without reasonable excuse, fails²³ to give his permission for a laboratory test of a specimen of blood so taken from him²⁴ is guilty of an offence²⁵.

1 le any person holding the office of constable: see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to the British Transport Police see PARA 281 et seq ante.

2 Transport and Works Act 1992 s 31A(1) (s 31A added by the Police Reform Act 2002 s 58(4)).

3 le in the absence of any incapacity of that person and of any objection under the Transport and Works Act 1992 s 33 (as amended) (protection for hospital patients: see PARA 382 post): see s 31A(1)(a) (as added: see note 2 supra).

4 le under ibid s 31 (as amended) (see PARA 379 ante): see s 31A(1)(a) (as added: see note 2 supra).

- 5 Ibid s 31A(1)(a) (as added: see note 2 supra).
- 6 Ibid s 31A(1)(b)(i) (as added: see note 2 supra).
- 7 Ie within the meaning given by ibid s 29(3) (see PARA 378 note 8 ante): see s 31A(1)(b)(ii) (as added: see note 2 supra).
- 8 Ibid s 31A(1)(b)(ii) (as added: see note 2 supra),
- 9 Ibid s 31A(1)(c) (as added: see note 2 supra).
- 10 Ibid s 31A(1)(d) (as added: see note 2 supra).
- 11 Ie under ibid s 31A (as added): see s 31A(2) (as added: see note 2 supra).
- 12 Ibid s 31A(2)(a) (as added: see note 2 supra).
- 13 For these purposes, 'police medical practitioner' means a medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of a police force: ibid s 31A(7) (as added: see note 2 supra).
- 14 Ibid s 31A(2)(b)(i) (as added: see note 2 supra).
- 15 Ibid s 31A(2)(b)(ii) (as added: see note 2 supra).
- 16 Ibid s 31A(3)(a) (as added: see note 2 supra).
- 17 Ibid s 31A(3)(b) (as added: see note 2 supra).
- 18 Ie in pursuance of a request under ibid s 31A (as added): see s 31A(4) (as added: see note 2 supra).
- 19 Ibid s 31A(4)(a) (as added: see note 2 supra).
- 20 Ibid s 31A(4)(b) (as added: see note 2 supra).
- 21 Ibid s 31A(4)(c) (as added: see note 2 supra).
- 22 Ibid s 31A(5) (as added: see note 2 supra). As to the protection of hospital patients see PARA 382 post.
- 23 As to the meaning of 'fail' see PARA 378 note 15 ante.
- 24 Ie under the Transport and Works Act 1992 s 31A (as added): see s 31A(6) (as added: see note 2 supra).
- 25 Ibid s 31A(6) (as added: see note 2 supra). A person guilty of an offence under s 31A (as added) is liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both: s 36(1). As to the institution of proceedings in England and Wales in respect of an offence under Pt II (ss 26-59) (as amended) see PARA 372 note 2 ante. As to the standard scale see PARA 370 note 7 ante.

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381. Choice of specimens of breath.

Of any two specimens of breath provided by a person¹ in the course of an investigation into whether a person has committed an offence involving drink or drugs², the one with the lower proportion of alcohol in the breath must be used and the other must be disregarded³. However, if the specimen with the lower proportion of alcohol contains no more than a specified amount⁴, the person who provided it may claim that it should be replaced by a specimen of blood or urine⁵ and, if he then provides such a specimen, neither specimen of breath may be used⁶.

1 Ie provided in pursuance of the Transport and Works Act 1992 s 31 (as amended) (see PARA 379 ante): see s 32(1).

2 Ie an offence under *ibid* s 27 (see PARA 377 ante). As to the meaning of 'drug' see PARA 377 note 7 ante.

3 *Ibid* s 32(1).

4 The amount specified is 50 microgrammes of alcohol in 100 millilitres of breath: *ibid* s 32(2). The Secretary of State may by regulations substitute another proportion of alcohol in the breath for that specified in s 32(2): s 32(3). The power to make regulations under s 32 is exercisable by statutory instrument; and no such regulations may be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament: s 32(4). It is the duty of the Secretary of State, before he makes regulations under s 32, to consult such organisations as he considers to be representative of persons who are to be affected by the regulations: s 57. At the date at which this volume states the law no regulations had been made under s 32. As to the Secretary of State see PARA 35 ante.

5 Ie a specimen as required under *ibid* s 31(6) (as amended) (see PARA 379 ante): see s 32(2).

6 *Ibid* s 32(2).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(i) Offences Associated with Railway Operations/D. OFFENCES BY RAILWAY EMPLOYEES INVOLVING DRINK OR DRUGS/382. Protection for hospital patients against provision of specimens.

382. Protection for hospital patients against provision of specimens.

While a person is at a hospital¹ as a patient, he must not be required to provide a specimen of breath for a breath test² or to provide a specimen for a laboratory test³ unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement⁴; and: (1) if the requirement is then made, it must be for the provision of a specimen at the hospital⁵; but (2) if the medical practitioner objects on the ground specified in this case⁶, the requirement must not be made⁷.

While a person is at a hospital as a patient, no specimen of blood is to be taken from him under the power to take such a specimen irrespective of whether the person concerned consents⁸, and he is not required to give his permission for a laboratory test of a specimen so taken⁹, unless the medical practitioner in immediate charge of his case: (a) has been notified of the proposal to take the specimen or to make the requirement¹⁰; and (b) he has not objected on the ground specified in this case¹¹.

A person may not be arrested in the course of an investigation into whether a person has committed an offence involving drink¹² while he is at a hospital as a patient¹³.

1 For the meaning of 'hospital' see PARA 379 note 8 ante.

2 As to when a person provides a specimen of breath for a breath test see PARA 378 note 7 ante. For the meaning of 'breath test' see PARA 378 note 7 ante.

3 In connection with the provision of specimens (see PARAS 377 et seq ante, 383 post).

4 Transport and Works Act 1992 s 33(1).

5 Ibid s 33(1)(a).

6 For these purposes, the ground on which the medical practitioner may object is that the requirement or the provision of a specimen or (if one is required) the warning required under ibid s 31(9) (warning that a failure to provide a specimen may result in prosecution: see PARA 379 ante) would be prejudicial to the proper care and treatment of the patient: s 33(2)(a) (s 33(2) substituted by the Police Reform Act 2002 s 58(5)).

7 Transport and Works Act 1992 s 33(1)(b).

8 Ie under ibid s 31A (as added) (see note 380 ante): see s 33(1A) (as added: see note 10 infra).

9 See note 8 supra.

10 Transport and Works Act 1992 s 33(1A)(a) (s 33(1A) added by the Police Reform Act 2002 s 58(5)).

11 Transport and Works Act 1992 s 33(1A)(b) (as added: see note 10 supra). For these purposes, the ground on which the medical practitioner may object is that the taking of the specimen, the requirement or the warning required by s 31A(5) (as added) (warning that a failure to give permission may result in prosecution: see PARA 380 ante) would be prejudicial to the proper care and treatment of the patient: s 33(2)(b) (as substituted: see note 6 supra).

12 Ie arrested under ibid s 30(2) (see PARA 378 ante): see s 33(3).

13 Ibid s 33(3).

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383. Use of specimens in proceedings for offences involving drink or drugs.

In proceedings against a person for any offence involving drink or drugs¹ while working on a transport system², evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided³ by or taken from⁴ the accused must be taken into account⁵, and it must be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen⁶. That assumption is not to be made, however, if the accused proves: (1) that he consumed alcohol before he provided the specimen (or had it taken from him) and after he had stopped work on the occasion of the alleged offence⁷; and (2) that, had he not done so, the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit⁸ and, where the offence alleged is an offence of being unfit to carry out the work in question through drink, would not have been such as to impair his ability to carry out that work properly⁹.

Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen will not be admissible in the proceedings on behalf of the prosecution unless¹⁰: (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided¹¹; and (b) the other part was supplied to the accused¹². Where a specimen of blood was taken from the accused¹³, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution in the proceedings unless¹⁴: (i) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the accused was divided at the time it was taken¹⁵; and (ii) any request to be supplied with the other part which was made by the accused at the time when he gave his permission for a laboratory test of the specimen was complied with¹⁶.

In proceedings for any such offence¹⁷, evidence of the proportion of alcohol in a specimen of breath may be given by the production of a document (or documents) purporting to be¹⁸: (A) a statement automatically produced by the device by which the proportion of alcohol in the specimen was measured¹⁹; and (B) a certificate signed by a constable²⁰ (which may but need not be contained in the same document as the statement) that the specimen was provided by the accused at the date and time shown in the statement²¹.

In such proceedings, evidence of the proportion of alcohol or a drug in a specimen of blood or urine may be given by the production of a document purporting to be a certificate signed by an authorised analyst²² identifying the specimen and stating the proportion of alcohol or drug found in it²³. Likewise, evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner or a registered health care professional²⁴ may be given by the production of a document purporting to be a certificate to that effect signed by the practitioner or a registered health care professional²⁵. In either case²⁶, such a document is admissible in evidence on behalf of the prosecution²⁷ only if a copy of it was served on the accused not later than seven days before the hearing²⁸.

A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not admissible in evidence on behalf of the prosecution²⁹ if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed³⁰.

1 As to the meaning of 'drug' see PARA 377 note 7 ante.

2 Ie an offence under the Transport and Works Act 1992 s 27 (see PARA 377 ante): see s 34(1). As to when a person is working on a transport system see PARA 377 note 1 ante.

3 As to when a person provides a specimen of breath see PARA 378 note 7 ante; and as to choice of specimens of breath see PARA 381 ante. As to the provision of a specimen of blood or urine for a laboratory test see PARA 379 ante; and as to when a person provides a specimen of blood see PARA 379 note 5 ante.

4 Ie under the Transport and Works Act 1992 s 31A (as added) (see note 380 ante): see s 34(1)(a) (as amended: see note 5 infra).

5 Ibid s 34(1)(a) (amended by the Police Reform Act 2002 s 58(6)).

6 Transport and Works Act 1992 s 34(1)(b).

7 Ibid s 34(2)(a) (amended by the Police Reform Act 2002 s 58(7)).

8 For the meaning of 'prescribed limit' for these purposes see PARA 377 note 11 ante.

9 Transport and Works Act 1992 s 34(2)(b).

10 Ibid s 34(3).

11 Ibid s 34(3)(a).

12 Ibid s 34(3)(b).

13 Ie under ibid s 31A (as added) (see note 380 ante): see s 34(3A) (as added: see note 14 infra).

14 Ibid s 34(3A) (added by the Police Reform Act 2002 s 58(8)).

15 Transport and Works Act 1992 s 34(3A)(a) (as added: see note 14 supra).

16 Ibid s 34(3A)(b) (as added: see note 14 supra).

17 Ie an offence under ibid s 27 (see PARA 377 ante): see s 35(1).

18 Ibid s 35(1). A document as mentioned in s 35(1) is admissible in evidence on behalf of the prosecution in pursuance of s 35 (as amended) only if a copy of it either was handed to the accused when the document was produced or was served on him not later than seven days before the hearing: s 35(4). For these purposes, 'served' means served personally or sent by registered post or recorded delivery service: s 35(7). Note that s 66 (service of notices) does not apply to anything required or authorised to be served under s 35 (as amended): see PARA 308 ante.

19 Ibid s 35(1)(a).

20 Ie any person holding the office of constable: see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to the British Transport Police see PARA 281 et seq ante.

21 Transport and Works Act 1992 s 35(1)(b).

22 For these purposes, 'authorised analyst' means (1) any person possessing the qualifications prescribed by regulations made under the Food Safety Act 1990 s 27(2) (as amended) (see FOOD vol 18(2) (Reissue para 268)) as qualifying persons for appointment as public analysts under that Act (Transport and Works Act 1992 s 35(8) (a); Interpretation Act 1978 s 17); or (2) any other person authorised by the Secretary of State to make analyses for the purposes of the Transport and Works Act 1992 s 35 (as amended) (s 35(8)(b)). As to the Secretary of State see PARA 35 ante.

23 Ibid s 35(2).

24 For the meaning of 'registered health care professional' see PARA 379 note 5 ante.

25 Transport and Works Act 1992 s 35(3) (amended by the Police Reform Act 2002 s 58(9)).

26 le under the Transport and Works Act 1992 s 35(2) (see the text and notes 22-23 supra) or s 35(3) (as amended) (see the text and notes 24-25 supra): see s 35(5).

27 le in pursuance of *ibid* s 35 (as amended): see s 35(5).

28 *Ibid* s 35(5).

29 le in pursuance of *ibid* s 35 (as amended): see s 35(6).

30 *Ibid* s 35(6).

UPDATE

383 Use of specimens in proceedings for offences involving drink or drugs

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see *LOCAL GOVERNMENT* vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Maintenance of Order

A. OBSTRUCTION AND INTERFERENCE, ETC

384. Obstruction of officers or agents of railway undertaker.

If any person wilfully obstructs¹ or impedes any officer or agent of a railway undertaker² in the execution of his duty on the railway or on or in the works or premises connected with it, that person and anyone aiding or assisting him will, upon conviction by a magistrates' court, at the discretion of the court, be imprisoned for a term not exceeding one month or be liable to a fine not exceeding level 1 on the standard scale³; and in default of payment will or may be imprisoned⁴.

1 Similar words in private Acts have been held to mean that the obstruction must be intentional: see *Batting v Bristol and Exeter Rly Co* (1860) 3 LT 665. For the construction of similar words in the byelaw of an omnibus company cf *Baker v Ellison* [1914] 2 KB 762, DC. As to railways constructed under special Acts see PARA 291 ante.

2 The provisions of the Railway Regulation Act 1840 and of the Railway Regulation Act 1842 are to be construed together as one Act, except so far as the provisions of the Railway Regulation Act 1840 are inconsistent with the provisions of the Railway Regulation Act 1842: see s 2 (amended by the Statute Law Revision (No 2) Act 1888). Accordingly, for these purposes, 'railway' is construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and 'company' is construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators and assigns: see the Railway Regulation Act 1842 s 21 (amended by the Statute Law Revision (No 2) Act 1888). As to railway undertakers generally see PARA 326 note 1 ante.

The expressions 'company' and 'railway company' are to be treated in the Regulation of Railway Regulation Act 1840 s 16 (as amended; prospectively further amended) as including (in so far as it does not already do so) any through service operator for the purposes of the Channel Tunnel Act 1987: see s 43, Sch 6 para 3 (amended by the Transport and Works Act 1992 s 68(1), Sch 4 Pt I; and the Inquiries Act 2005 s 49(2), Sch 3). As to the Channel Tunnel see PARA 324 ante.

3 See the Railway Regulation Act 1840 s 16 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law Revision (No 2) Act 1888; the Statute Law Revision Act 1892; the Magistrates' Courts Act 1952 ss 132, 133(2), Sch 6; the British Railways Act 1965 s 35(1); the London Transport Act 1965 s 34(1); the Criminal Justice Act 1982 s 46; and the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 Pt 1 para 3). As to the standard scale see PARA 370 note 7 ante; and as to the modification of the penalty as it applies to Concessionaires and through service operators relating to the Channel Tunnel see the Channel Tunnel Act 1987 Sch 6 para 4.

As from a day to be appointed under the Criminal Justice Act 2003 s 336(3), the words 'one month' in the phrase 'term not exceeding one month' in the Railway Regulation Act 1840 s 16 (as amended) are repealed and substituted so that the term becomes one not exceeding 51 weeks: see s 16 (as so amended; prospectively further amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 1). However, at the date at which this volume states the law, no such day had been appointed.

4 See the Railway Regulation Act 1840 s 16 (as amended: see note 3 supra).

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385. Obstruction of construction works.

Any person who wilfully obstructs any person acting under the authority of a railway undertaker¹ in the lawful exercise of its powers in setting out the line of the railway² or pulls up or removes any poles or stakes driven into the ground for that purpose or defaces or destroys any marks made for that purpose, is liable to a penalty³ for every such offence⁴.

1 As to railway undertakers see PARA 326 note 1 ante.

2 For the meaning of 'railway' for these purposes see PARA 326 note 1 ante.

3 The maximum fine is level 1 on the standard scale for every such offence: Railways Clauses Consolidation Act 1845 s 24 (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 370 note 7 ante.

Provisions under the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

4 Railways Clauses Consolidation Act 1845 s 24 (as amended: see note 3 supra).

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386. Interference with a railway.

A person who unlawfully and maliciously does anything in respect of a railway¹ with intent to obstruct, destroy or otherwise interfere with any engine, tender, carriage or truck using the railway is guilty of an offence and on conviction is liable to imprisonment for life or any shorter term². It is also an offence for a person, by any unlawful act or wilful omission, to obstruct any engine or carriage using a railway³; and a person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the prescribed sum or to both⁴.

Byelaws may make particular provision with respect to the obstruction of a railway or with respect to any other interference with the working of a railway, with a relevant asset or with the provision of a railway service⁵.

1 For the purpose of these provisions 'railway' includes a private railway and is not limited to a railway constructed under an Act of Parliament: *O'Gorman v Sweet* (1890) 54 JP 663.

2 See the Malicious Damage Act 1861 s 35 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 344.

3 See *ibid* s 36; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 344.

4 See *ibid* s 36; the Criminal Justice Act 1948 s 1(2); the Criminal Law Act 1967 s 1; the Magistrates' Courts Act 1980 ss 17, 32(1), Sch 1 para 4; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 344. As to the prescribed sum see PARA 367 note 6 ante.

As from a day to be appointed, the maximum term of imprisonment of six months referred to in the text is increased to a maximum term of 12 months (see the Magistrates' Courts Act 1980 s 32(1), Sch 1 (s 32(1) prospectively amended); and MAGISTRATES vol 29(2) (Reissue) PARAS 655-656). However, at the date at which this volume states the law no such day had been appointed.

5 See PARA 18 ante; and as to liability for contravening byelaws see PARA 392 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/ (ii) Maintenance of Order/A. OBSTRUCTION AND INTERFERENCE, ETC/387. Interference with milestones.

387. Interference with milestones.

Any person who wilfully pulls down a milestone¹ is liable to a fine in respect of each offence².

¹ As to the obligation of a railway undertaker to cause the length of the railway to be measured by milestones, posts or other conspicuous objects see PARA 342 ante.

² Railways Clauses Consolidation Act 1845 s 95 (amended by the Statute Law Revision Act 1959; and the Criminal Damage Act 1971 s 11(8), Schedule Pt 1). In relation to milestones belonging to Network Rail plc the maximum fine is level 2 on the standard scale: British Railways Act 1980 s 43, Sch 3 (amended by Criminal Justice Act 1982 s 46). For other milestones the maximum fine is level 1 on the standard scale: Criminal Law Act 1977 s 31(6) (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 370 note 7 ante.

Any of the provisions of the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

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388. Conduct affecting the efficiency of the British Transport Police Force.

The general provisions which make it an offence for any person to assault a constable in the execution of his duty (or a person assisting a constable in the execution of his duty)¹ and to resist or wilfully obstruct a constable in the execution of his duty (or a person assisting a constable in the execution of his duty)² apply in relation to a constable of the British Transport Police Force as they apply in relation to other constables in England and Wales³.

The general provision which make it an offence to impersonate a constable⁴ also apply with necessary modifications⁵.

1 I.e. the Police Act 1996 s 89(1) (see POLICE vol 36(1) (2007 Reissue) PARA 481).

2 I.e. ibid s 89(2) (as amended) (see POLICE vol 36(1) (2007 Reissue) PARA 481).

3 Railways and Transport Safety Act 2003 s 68(1).

4 I.e. the Police Act 1996 s 90 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 397; and POLICE vol 36(1) (2007 Reissue) PARA 481).

5 See the Railways and Transport Safety Act 2003 s 68(2).

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B. CONTRAVENTION ETC OF EXTRAORDINARY SECURITY MEASURES

389. Contravention of or failure to comply with direction given in emergency situations.

Any person who, without reasonable excuse, contravenes¹ or fails to comply with a direction given to him by the Secretary of State² in time of hostilities (whether actual or imminent), severe international tension or great national emergency³, is guilty of an offence⁴. However, no proceedings are to be instituted in England and Wales⁵ in respect of such an offence⁶ except by or with the consent of the Secretary of State or the Director of Public Prosecutions⁷.

1 As to the meaning of 'contravention' in relation to any direction see PARA 29 note 13 ante.

2 As to the Secretary of State see PARA 35 ante.

3 I.e. a direction given under the Railways Act 1993 s 118 (as amended) (see PARA 285 ante): see s 118(7). For the meaning of 'great national emergency' see PARA 285 note 1 ante.

4 Ibid s 118(7). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: see s 118(7). As to the statutory maximum see PARA 367 note 6 ante. As to offences committed by bodies corporate see s 147; and PARA 428 post.

5 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

6 I.e. under the Railways Act 1993 s 118 (as amended) (see the text and notes 1-4 supra): see s 118(8).

7 Ibid s 118(8). Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/ (ii) Maintenance of Order/B. CONTRAVENTION ETC OF EXTRAORDINARY SECURITY MEASURES/390. Failure to comply with instruction given in security situations.

390. Failure to comply with instruction given in security situations.

A person who without reasonable excuse fails to do anything required of him by an instruction issued by the Secretary of State¹ for the purpose of ensuring that relevant assets² within Great Britain³ (or persons or property on or in any such relevant asset) are protected against acts of violence⁴, is guilty of an offence⁵. No proceedings are to be instituted in England and Wales⁶ in respect of such an offence⁷ except by or with the consent of the Secretary of State or the Director of Public Prosecutions⁸.

A person who without reasonable excuse fails to do anything required of him by an enforcement notice served pursuant to such an instruction⁹, is guilty of an offence¹⁰. No proceedings are to be instituted in England and Wales in respect of such an offence¹¹ except by or with the consent of the Secretary of State or the Director of Public Prosecutions¹².

A person is guilty of an offence if he: (1) intentionally obstructs an authorised person acting in the exercise of any power conferred on him for the purpose of inspecting any relevant asset in order to ascertain whether such an instruction should be given to any person or whether any instruction or enforcement notice is being or has been complied with¹³; (2) fails, without reasonable excuse, to comply with a requirement imposed on him¹⁴ to furnish information to an authorised person¹⁵; or (3) in furnishing any information so required¹⁶, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular¹⁷. No proceedings are to be instituted in England and Wales in respect of such an offence except by or with the consent of the Secretary of State or the Director of Public Prosecutions¹⁸.

1 As to the Secretary of State see PARA 35 ante.

2 For the meaning of 'relevant assets' for these purposes see PARA 286 note 3 ante.

3 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

4 Ie an instruction given under the Railways Act 1993 s 119 (as amended) (see PARA 286 ante): see s 119(9). For the meaning of 'acts of violence' for these purposes see PARA 286 note 6 ante.

5 Ibid s 119(9). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or both: see s 119(9). As to the statutory maximum see PARA 367 note 6 ante. As to offences committed by bodies corporate see s 147; and PARA 428 post.

The provisions of s 119 bind the Crown: see s 150(1)(g).

6 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

7 Ie under the Railways Act 1993 s 119(9) (as amended) (see the text and notes 1-5 supra): see s 119(10).

8 Ibid s 119(10). See note 5 supra. Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

9 Ie an enforcement notice served under ibid s 120 (see PARA 288 ante): see s 120(4).

10 Ibid s 120(4). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or both: see s 120(4).

The provisions of s 120(4), (5) (see also the text and notes 11-12 *infra*) do not bind the Crown: see s 150(1)(g).

11 Ie under ibid s 120(4) (see the text and notes 9-10 *supra*): see s 120(5).

12 Ibid s 120(5). See note 10 *supra*.

13 Ibid s 121(4)(a). The power referred to in the text is that conferred by s 121: see s 121(4)(a).

The provisions of s 121(4)-(6) (see also the text and notes 14-18 *infra*) do not bind the Crown: see s 150(1)(g).

14 Ie under ibid s 121(2)(c) (see PARA 288 *ante*): see s 121(4)(b).

15 Ibid s 121(4)(b). See note 13 *supra*.

16 Ie under ibid s 121(2)(c) (see PARA 288 *ante*): see s 121(4)(c).

17 Ibid s 121(4)(c). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: see s 121(5). See note 13 *supra*.

18 Ibid s 121(6). See note 13 *supra*.

UPDATE

390-391 Failure to comply with instruction given in security situations, Sporting Events (Control of Alcohol etc) Act 1985

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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C. CONTROL OF ALCOHOL ON TRAINS

391. Sporting Events (Control of Alcohol etc) Act 1985.

It is an offence to cause or permit alcohol to be carried on railway passenger vehicles carrying passengers to or from certain designated sporting events¹.

¹ See the Sporting Events (Control of Alcohol etc) Act 1985 s 1 (amended by the Licensing Act 2003 s 198(1), Sch 6 paras 96, 97); and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 597 et seq.

UPDATE

390-391 Failure to comply with instruction given in security situations, Sporting Events (Control of Alcohol etc) Act 1985

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

391 Sporting Events (Control of Alcohol etc) Act 1985

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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(iii) Offences in relation to Byelaws

392. Contravention of byelaws.

Byelaws made under the Railways Act 2005¹ may provide that a person contravening² them is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale³ or such lower amount as is specified in the byelaws⁴.

1 As to the making of byelaws under the Railways Act 2005 see PARA 18 ante.

2 As to the meaning of 'contravention' for these purposes see PARA 70 note 23 ante.

3 As to the standard scale see PARA 370 note 7 ante.

4 Railways Act 2005 s 46(3), Sch 9 para 2.

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393. Penalty for defacing boards exhibiting byelaws.

Any person who pulls down or injures any board put up to publish any byelaw¹ or statutory penalty, or obliterates any letters or figures on the board, is liable to a penalty² and must also pay the cost of restoration of the board³.

1 As to the continuity of byelaws preserved under the Railways Act 2005 see PARA 18 note 2 ante.

2 The maximum fine is level 1 on the standard scale: see the Railways Clauses Consolidation Act 1845 s 144 (as amended: see note 3 infra). As to the standard scale see PARA 370 note 7 ante.

3 Ibid s 144 (amended by the Transport Act 1962 s 84(4); and the Criminal Justice Act 1982 s 46). As to the summary recovery of damages and penalties under the Railways Clauses Consolidation Act 1845 see PARA 423 post.

Provisions under the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

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(iv) Offences in relation to Tickets and Fares

A. GENERAL PROVISIONS

394. Offences in relation to tickets.

Every railway passenger, if requested to do so by an officer¹ or servant of the railway company², must produce and, if so requested, deliver up a ticket showing that his fare is paid, or pay the fare from his point of departure, or give the officer or servant his name and address³. If a passenger fails to comply with the request to produce, he is liable on summary conviction to a fine⁴; and if, having failed to produce or (if requested) deliver up such a ticket or to pay his fare, a passenger refuses or fails to give the employee his name and address, any officer of the company may detain him until he can be brought before a justice⁵.

Whether or not a passenger has failed to produce his ticket is a question of fact⁶. If the passenger gives a name and address, the company's employees have no right to detain him to make inquiries whether the name and address given are correct⁷.

¹ A ticket inspector is an officer for the purposes of this provision: *Moberly v Allsop* (1992) 156 JP 514, [1992] COD 190.

² 'Railway company' includes an operator of a train: Regulation of Railways Act 1889 s 5(5) (added by the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/ 857, art 2, Schedule para 5). 'Operator' in relation to a train, means the person having the management of that train for the time being: Regulation of Railways Act 1889 s 5(5) (as so added).

The expressions 'company' and 'railway company' are to be treated in the Regulation of Railways Act 1889 s 5 (as amended) as including (in so far as it does not already do so) any through service operator for the purposes of the Channel Tunnel Act 1987: see s 43, Sch 6 para 3 (amended by the Transport and Works Act 1992 s 68(1), Sch 4 Pt I; and the Inquiries Act 2005 s 49(2), Sch 3). As to the Channel Tunnel see PARA 324 ante.

³ Regulation of Railways Act 1889 s 5(1).

⁴ *Ibid* s 5(1). The fine referred to in the text must not exceed level 1 on the standard scale: s 5(1) (amended by the Criminal Justice Act 1982 ss 38, 46). A season ticket falls within these provisions: *Woodward v Eastern Counties Rly Co* (1861) 4 LT 336. As to the standard scale see PARA 370 note 7 ante; and as to the modification of the penalty as it applies to Concessionaires and through service operators relating to the Channel Tunnel see the Channel Tunnel Act 1987 Sch 6 para 4.

There is no provision made in the Regulation of Railways Act 1889, as there is in the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) (see PARA 400 post), for circumstances in which a penalty fare is not to be charged but it is submitted that these circumstances would apply for the purposes of the 1889 Act also.

⁵ Regulation of Railways Act 1889 s 5(2) (amended by the British Railways Act 1965 s 35(5); the London Transport Act 1965 s 34(5); and the Police and Criminal Evidence Act 1984 ss 26(1), 119(2), Sch 7 Pt I).

⁶ If a passenger in fact has a ticket but cannot find it when required to produce it, it is a question of fact whether he has failed to produce it: *Brotherton v Metropolitan and District Joint Committee* (1893) 9 TLR 645, CA.

⁷ If the name and address given are in fact correct, there is no power to detain the passenger and it is immaterial that the company had reasonable and probable cause to suspect the address was incorrect: *Knights v London, Chatham and Dover Rly Co* (1893) 62 LJQB 378.

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395. Travelling with intent to avoid payment.

Any person who: (1) travels or attempts to travel¹ on a railway without having previously paid his fare² and with intent to avoid payment³; (2) having paid his fare for a certain distance, knowingly and wilfully proceeds beyond that distance without previously paying the additional fare for the additional distance and with intent to avoid payment of the additional fare⁴; or (3) having failed to pay his fare, gives in reply to a request by an officer of the railway company⁵ a false name or address⁶, is liable on summary conviction to a fine or, in the discretion of the court, to imprisonment for a term not exceeding three months⁷. The fare payable by a person who has travelled without payment may be recovered irrespective of that person's liability to punishment under these provisions⁸.

Where a passenger who has arrived at the point to which he has paid his fare knowingly and wilfully refuses or neglects to quit the carriage in which he has travelled, he is liable to a fine⁹.

Byelaws may make particular provision with respect to tickets issued for entry on relevant assets or for travel by railway or with respect to evasion of the payment of fares or other charges¹⁰.

1 A traveller is still travelling when at the exit or terminus of the arrival platform, not having yet left the arrival platform: *Murphy v Verati* [1967] 1 All ER 861, [1967] 1 WLR 641, DC. See also *Bremme v Dubery* [1964] 1 All ER 193, [1964] 1 WLR 119, DC.

2 The fare must be paid to the railway company: *Reynolds v Beasley* [1919] 1 KB 215, DC. See also *Langdon v Howells* (1879) 4 QBD 337, DC. Where the defendant travelled in a second class carriage with a third class ticket with intent to defraud, he was held not to have previously paid his fare: *Gillingham v Walker* (1881) 44 LT 715, DC. See also *Noble v Killick* (1891) 60 LJMC 61, DC.

As to whether a person who acquires another's unexpired ticket and sells it on may be found guilty under the Theft Act 1968 see *R v Marshall* [1998] 2 Cr App Rep 282, [1999] Crim LR 317, sub nom *R v Marshall, R v Coombes, R v Eren* (1998) Times, 10 March (London Underground tickets).

3 Regulation of Railways Act 1889 s 5(3)(a). There may be an intention to avoid payment of the fare without fraud, which is not a necessary ingredient of the offence: see *Browning v Floyd* [1946] KB 597, [1946] 2 All ER 367, DC. An intention not to pay a fare unless and until asked to do so constitutes intention to avoid payment: *Corbyn v Saunders* [1978] 2 All ER 697, [1978] 1 WLR 400, DC. As to the exclusion of double liability under the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 402 post.

4 Regulation of Railways Act 1889 s 5(3)(b). See note 3 supra.

5 For the meaning of 'railway company' for these purposes see PARA 394 note 2 ante.

6 Regulation of Railways Act 1889 s 5(3)(c).

7 Ibid s 5(3) (amended by the Transport Act 1962 s 84(2); and the Criminal Justice Act 1982 s 46). The fine referred to in the text must not exceed level 2 on the standard scale: s 5(3) (amended by the Criminal Justice Act 1982 ss 35, 38, 46). As to the standard scale see PARA 370 note 7 ante; and as to the modification of the penalty as it applies to Concessionaires and through service operators relating to the Channel Tunnel see the Channel Tunnel Act 1987 Sch 6 para 4.

As from a day to be appointed under the Criminal Justice Act 2003 s 336(3), the words 'three months' in the phrase 'term not exceeding three months' in the Regulation of Railways Act 1889 s 5(3) (as amended) are repealed and substituted so that the term becomes one not exceeding 51 weeks: see s 5(3) (as so amended; prospectively further amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 3). However, at the date at which this volume states the law, no such day had been appointed.

8 Regulation of Railways Act 1889 s 5(4). The fact that an excess fare has been demanded from a person travelling in a first class carriage with a second class ticket is no bar to criminal proceedings: *Noble v Killick* (1891) 60 LJMC 61, DC. Where it costs more to take a ticket to an intermediate station X, than to a more distant station Y, and the defendant took a ticket to Y but left the train at X, it was held that a similar charge against him was not maintainable: *R v Frere* (1855) 4 E & B 598. As to civil liability for the difference of fares in such a case see *Great Northern Rly Co v Winder* [1892] 2 QB 595, DC; and CARRIAGE AND CARRIERS vol 7 (2008) PARA 77.

9 Railways Clauses Consolidation Act 1845 s 103 (amended by the Regulation of Railways Act 1889 s 5; the Statute Law Revisions Act 1892; the Justices of the Peace Act 1949 s 46, Sch 7 Pt III; and the Criminal Justice Act 1982 s 46). The fine referred to in the text must not exceed level 1 on the standard scale: Railways Clauses Consolidation Act 1845 s 103 (as so amended).

Provisions under the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

10 See PARA 18 ante; and as to liability for contravening byelaws see PARA 392 ante.

UPDATE

395 Travelling with intent to avoid payment

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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B. OFFENCES UNDER PENALTY FARES REGULATIONS

396. Penalty fares.

The Secretary of State¹ may by regulations² make provision for and in connection with³:

- 1131 (1) the imposition of requirements on persons travelling by, present on, or leaving trains⁴ or stations⁵ to produce, if required to do so in accordance with the regulations, a ticket or other authority⁶ authorising them to travel by, be present on, or leave the train or station in question⁷; and
- 1132 (2) the charging of persons in breach of such requirements to financial penalties ('penalty fares') in such circumstances, and subject to compliance with such conditions (if any), as may be prescribed⁸.

Regulations may make provision for or with respect to:

- 1133 (a) the persons who may be charged penalty fares⁹;
- 1134 (b) the persons by or on behalf of whom penalty fares may be charged¹⁰;
- 1135 (c) the trains and stations by reference to which penalty fares may be charged¹¹;
- 1136 (d) the amount, or the greatest amount, which a person may be charged by way of penalty fare, whether a specified amount or one determined in a prescribed manner¹²;
- 1137 (e) the authorising of persons to be collectors¹³;
- 1138 (f) the manner in which charges to penalty fares may be imposed by collectors, including any requirements to be complied with by or in relation to collectors¹⁴;
- 1139 (g) the authorising of collectors in prescribed circumstances to require persons on trains or stations to furnish prescribed information¹⁵;
- 1140 (h) the display of prescribed notices in places of a prescribed description¹⁶;
- 1141 (i) the manner in which, and the period within which, any penalty fare charged to a person is to be paid¹⁷;
- 1142 (j) the issue of prescribed documents¹⁸ to persons who are charged, or who have paid, penalty fares¹⁹;
- 1143 (k) the recovery of any unpaid penalty fare as a civil debt, including provision²⁰: (i) for or with respect to defences that are to be available in proceedings for the recovery of an unpaid penalty fare²¹; or (ii) for presumptions of fact to operate, in such proceedings, in favour of the person charged with the penalty fare, but subject to compliance with prescribed procedural requirements²²;
- 1144 (l) the retention, by persons by or on behalf of whom charges to penalty fares are imposed, of sums paid by way of penalty fare²³;
- 1145 (m) the remission of liability to pay penalty fares and the repayment of sums paid by way of penalty fare²⁴;
- 1146 (n) the prevention of a person's being liable both to payment of a penalty fare and to prosecution for a prescribed offence²⁵;

- 1147 (o) the imposition by the Secretary of State²⁶ of prohibitions on the charging of penalty fares by prescribed persons and in prescribed circumstances²⁷.

Regulations may impose, or make provision for and in connection with the imposition or enforcement of, prescribed requirements in prescribed circumstances on or against a holder of a passenger licence²⁸ or station licence²⁹ or a passenger service operator³⁰ (whether or not one by or on behalf of whom penalty fares are or are to be charged)³¹; and, without prejudice to the generality of the foregoing, any such regulations may make provision with respect to: (A) the display of notices relating to penalty fares³²; (B) the provision of facilities for the issue of tickets or other authorities to travel by, be present on, or leave trains or stations³³; (C) the provision of information to prescribed persons or persons of a prescribed class or description³⁴.

Regulations may provide that where information is required to be furnished pursuant to the regulations either a refusal to furnish any such information, or the furnishing of information which is false in a material particular, is, in prescribed circumstances, to be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale³⁵.

1 The Secretary of State and the Scottish Ministers each have the power provided for under the Railways Act 1993 s 130 (as amended): see s 130(1) (amended by the Railways Act 2005 s 47(1)). As to the power of the Scottish Ministers under the Railways Act 1993 s 130 (as amended) see further s 130(1A), (11A) (added by the Railways Act 2005 s 47(2), (3)). As to the Secretary of State see PARA 35 ante; and as to the Scottish Ministers see PARA 124 note 7 ante.

2 For these purposes, 'regulations' means regulations under the Railways Act 1993 s 130(1) (as amended): s 130(12). Such regulations may make provision for any area within Great Britain and may make different provision for or in relation to different areas: s 130(9). For the meaning of 'Great Britain' see PARA 29 note 3 ante. The Secretary of State, in exercise of the powers conferred on him by s 130 (as amended) has made the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (amended by SI 2005/1095) (see PARAS 397-404 post).

Before making any regulations which have the effect of varying the amount, or the greatest amount, which a person within, or travelling to or from, Greater London may be charged by way of penalty fare, the Secretary of State must consult the Mayor of London: Railways Act 1993 s 130(9A) (added by the Greater London Authority Act 1999 s 206). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81. As to the operation of penalty fares on systems of transport serving London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 408 et seq.

3 Railways Act 1993 s 130(1) (as amended: see note 1 supra).

4 For these purposes, 'train' includes a reference to a part of a train: *ibid* s 130(12). For the meaning of 'train' see PARA 82 note 2 ante; definition applied by s 130(12).

5 For these purposes, 'station' includes a reference to a part of a station: *ibid* s 130(12). For the meaning of 'station' see PARA 82 note 5 ante; definition applied by s 130(12).

6 In *ibid* s 130 (as amended), any reference to a ticket or other authority of any description includes a reference to any other document which, under the regulations, is required to be produced in conjunction with any such ticket or other authority, for the purpose of demonstrating that the ticket or other authority produced by a person is valid in his case: see s 130(1), (12).

7 *Ibid* s 130(1)(a).

8 *Ibid* s 130(1)(b). 'Prescribed' means specified in, or determined in accordance with, regulations (see note 2 supra): s 130(12).

9 *Ibid* s 130(2)(a). Section 130(2)-(4) (s 130(2) as amended) is without prejudice to the generality of s 130(1) (as amended): s 130(11).

10 *Ibid* s 130(2)(b). See note 9 supra.

11 *Ibid* s 130(2)(c). See note 9 supra.

12 *Ibid* s 130(2)(d). See note 9 supra.

13 Ibid s 130(2)(e). See note 9 supra. For these purposes, 'collectors' means the individuals who perform the function (whether as servants or agents or otherwise) of imposing the charge of a penalty fare on the person liable to pay it under the regulations in each particular case: s 130(12).

14 Ibid s 130(2)(f). See note 9 supra.

15 Ibid s 130(2)(g). See note 9 supra.

16 Ibid s 130(2)(h). See note 9 supra.

17 Ibid s 130(2)(j). See note 9 supra.

18 For these purposes, 'document', without prejudice to the generality of the expression, includes any badge, token, or photograph or any other form of identification, certification or authentication: *ibid* s 130(12). The documents mentioned in s 130(2)(k) (head (j) in the text) include any document which consists of or includes: (1) notice of the imposition of a charge to a penalty fare (s 130(3)(a)); (2) a receipt for the payment of a penalty fare (s 130(3)(b)); or (3) a ticket or other authority to travel by, be present on, or leave a train or station (s 130(3)(c)). See note 9 supra.

19 Ibid s 130(2)(k). See note 9 supra.

20 Ibid s 130(2)(l). See note 9 supra.

21 Ibid s 130(2)(l)(i). See note 9 supra.

22 Ibid s 130(2)(l)(ii). See note 9 supra.

23 Ibid s 130(2)(m). See note 9 supra.

24 Ibid s 130(2)(n). See note 9 supra.

25 Ibid s 130(2)(o). See note 9 supra.

26 *Ie* or the Scottish Ministers (see note 1 supra): see *ibid* s 130(2)(p) (as substituted: see note 27 *infra*).

27 Ibid s 130(2)(p) (substituted by the Railways Act 2005 s 1(1), Sch 1 Pt 1 para 34(a)). See note 9 supra.

28 For the meanings of 'licence' and 'licence holder' see *PARA* 83 note 6 *ante*; definitions applied by the Railways Act 1993 s 130(12). For the meaning of 'passenger licence' see *PARA* 83 note 9 *ante*; definition applied by s 130(12). As to licences issued under the Railways Act 1993 see *PARA* 83 *et seq ante*.

29 For the meaning of 'station licence' see *PARA* 83 note 9 *ante*; definition applied by *ibid* s 130(12).

30 For the meaning of 'passenger service operator' see *PARA* 33 note 15 *ante*; definition applied by *ibid* s 130(12).

31 Ibid s 130(4). See note 9 supra.

32 Ibid s 130(4)(a). See note 9 supra.

33 Ibid s 130(4)(b). See note 9 supra.

34 Ibid s 130(4)(c). See note 9 supra. For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5).

35 Ibid s 130(7). Apart from s 130(7), nothing in s 130 creates, or authorises the creation of, any offence: s 130(8). As to the standard scale see *PARA* 370 note 7 *ante*.

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397. Requirement to produce a ticket.

Any person present travelling by, present on or leaving a train¹ must, if required to do so² by or on behalf of the operator³ of that train, produce a ticket or other authority⁴ authorising his travelling by or his being present on that train, as the case may be⁵. Any person present in or leaving a compulsory ticket area, other than a person leaving a train, must, if required to do so⁶ by or on behalf of the operator of a train, produce a ticket or other authority authorising him to be present in or to leave that compulsory ticket area⁷.

Any requirement to produce a ticket so imposed⁸ must be imposed by an authorised collector⁹ in the manner specified in rules¹⁰.

1 Any reference to a person leaving a train includes a person present in or leaving a compulsory ticket area having left a train arriving at that compulsory ticket area: Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 2(2). 'Compulsory ticket area' means any area at a station identified by a notice which indicates that persons may not enter that area without being able to produce a ticket or other authority authorising travel on a train arriving at or departing from that area or otherwise authorising entry into that area: reg 2(1). As to the meaning of 'train' for these purposes see PARA 396 note 4 ante.

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

2 In accordance with the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) and with rules: reg 3(1). 'Rules' means rules made by the Regulator under reg 11 (see PARA 403 post): reg 2(1). As to rules made under this provision see the Penalty Fares Rules 1997 (April 1997), published by the Office of Rail Regulation, which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

3 For these purposes, 'operator', in relation to any train, means the person having the management of that train for the time being and, in relation to any station, means the person having the management of that station for the time being; and 'operated' is to be construed accordingly: Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 2(1). As to the meaning of 'station' for these purposes see PARA 396 note 5 ante.

4 In the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended), where the context so admits any reference to a ticket or other authority includes a ticket or other authority valid for the class of travel used or being used by the holder of that ticket or other authority: reg 2(4). Where the terms on which a ticket or other authority is issued require the holder to produce on request any other document when using that ticket or other authority, any reference in the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) to a ticket or other authority includes such a document: reg 2(3).

5 Ibid reg 3(1). This provision is subject to the other provisions of the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) (see also PARAS 398-404 post) and to rules (see note 2 supra): see reg 3(1).

6 In accordance with the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) and with rules (see note 2 supra): see reg 3(2).

7 Ibid reg 3(2). This provision is subject to the other provisions of the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) (see also PARAS 398-404 post) and to rules (see note 2 supra): see reg 3(2).

8 In pursuant to ibid reg 3: see reg 3(3).

9 For these purposes, 'authorised collector' means a person authorised to be a collector by or under rules: ibid reg 2(1). As to rules see note 2 supra.

10 Ibid reg 3(3). As to rules see note 2 supra.

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398. Charge to a penalty fare.

Where a person fails to produce a ticket or other authority¹ when required to do so² by or on behalf of an operator³, that operator (or any person acting on behalf of that operator) may charge that person a penalty fare⁴. However, the operator of a train⁵ (or a person acting on his behalf) is not authorised⁶ to charge a penalty fare in respect of⁷: (1) travel by, presence on or leaving a train⁸ other than a train operated by that operator⁹; or (2) presence in or leaving a compulsory ticket area¹⁰ unless it is a compulsory ticket area at which a train operated by that operator has arrived or from which such a train will depart¹¹.

Any charge so made¹² is to be imposed by an authorised collector¹³ in the manner specified in rules¹⁴; and the amount of any penalty fare¹⁵ so charged¹⁶ is to be paid in the manner and within the period specified in rules¹⁷.

1 As to tickets or other authorities see PARA 397 note 4 ante.

2 Ie pursuant to the Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 3 (see PARA 397 ante): see reg 4(1).

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

3 For the meaning of 'operator' see PARA 397 note 3 ante.

4 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 4(1). This provision is subject to the other provisions of the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) (see PARAS 397 ante, 399-404 post) and to rules: reg 4(1). For the meaning of 'rules' see PARA 397 note 2 ante. As to circumstances in which a penalty should not be charged see PARA 400 post.

5 As to the meaning of 'train' for these purposes see PARA 396 note 4 ante.

6 Ie not authorised by the provisions of the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) or by rules: see reg 4(2).

7 Ibid reg 4(2).

8 As to references to a person leaving a train see PARA 397 note 1 ante.

9 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 4(2)(a).

10 For the meaning of 'compulsory ticket area' see PARA 397 note 1 ante.

11 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 4(2)(b).

12 Ie made pursuant to ibid reg 4: see reg 4(3).

13 For the meaning of 'authorised collector' see PARA 397 note 9 ante.

14 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 4(3).

15 As to the amount of a penalty fare see PARA 399 post.

16 Ie in accordance with the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended): see reg 4(4).

17 Ibid reg 4(4). The amount of any penalty fare charged in accordance with the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) and rules and not paid within the period specified in rules in accordance with reg 4(4) may be recovered from the person charged as a civil debt: reg 8.

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399. Amount of a penalty fare.

The amount of any penalty fare which may be charged¹ to a person present in or leaving a compulsory ticket area² (other than a person leaving a train³) is a prescribed amount⁴. Subject to this provision, the amount of any penalty fare which may be so charged is the prescribed amount⁵ or twice the amount of the full single fare applicable in the case, whichever is the greater⁶.

The full single fare applicable in the case of a person charged a penalty fare while travelling by, being present on or leaving a train (having travelled on or having been present on a preceding train⁷) is the full single fare in respect of a journey from the station⁸ (the 'first boarding station'), at which that person boarded the preceding train, to the next station at which the train by which he is travelling or on which he is present is scheduled to stop or (where that person is leaving the train at a station) that station⁹. The full single fare applicable in the case of any other person¹⁰ charged a penalty fare while travelling by, being present on or leaving a train is the full single fare in respect of a journey from the station (the 'boarding station'), at which that person boarded the train, to the next station at which the train by which he is travelling or on which he is present is scheduled to stop or (where that person is leaving the train at a station) that station¹¹.

Where the first boarding station or (as the case may be) the boarding station is not known to the authorised collector¹², the full single fare applicable in the case of a person charged a penalty fare while travelling by, being present on or leaving a train is the full single fare in respect of a journey from the station at which the train last made a scheduled stop, to the next station at which the train by which he is travelling or on which he is present is scheduled to stop or (where that person is leaving the train at a station) that station¹³.

1 The amount that may be charged under the Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 4 (see PARA 398 ante): reg 5(5) (as amended: see note 4 infra).

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

2 For the meaning of 'compulsory ticket area' see PARA 397 note 1 ante.

3 As to references to a person leaving a train see PARA 397 note 1 ante. As to the meaning of 'train' for these purposes see PARA 396 note 4 ante.

4 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 5(5) (amended by SI 2005/1095). The amount prescribed for these purposes is £20: Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 5(5) (as so amended).

5 The amount prescribed is £20: see *ibid* reg 5(1) (amended by SI 2005/1095).

6 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 5(1) (as amended: see note 5 supra).

7 For these purposes, 'preceding train' means a train: (1) by which a person travelled before changing to the train by which he is travelling, on which he is present or which he is leaving for the purposes of the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended); and (2) which was operated by the operator of the train to which that person changed: reg 2(1). For the meaning of 'operator' see PARA 397 note 3 ante.

8 As to the meaning of 'station' for these purposes see PARA 396 note 5 ante.

- 9 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 5(2).
- 10 le other than a person referred to in *ibid* reg 5(2) (as amended) (see the text and notes 7-9 *supra*): see reg 5(3).
- 11 *Ibid* reg 5(3).
- 12 For the meaning of 'authorised collector' see *PARA 397* note 9 *ante*.
- 13 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 5(4).

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400. Circumstances in which penalty fare not to be charged.

In the case of a person travelling by, being present on or leaving a train¹ (the 'relevant train'), no person is to be charged a penalty fare² if, at the time when and at the station³ where the person in question boarded the relevant train or (in the case where a person has boarded the relevant train after travelling on a preceding train⁴) if, at the time when and at the station where the person in question boarded that preceding train⁵:

- 1148 (1) there were no facilities in operation for the sale of the appropriate ticket or other authority⁶ to make the journey being or having been made by that person⁷;
- 1149 (2) the requirements of rules⁸ in respect of the display of notices were not satisfied⁹;
- 1150 (3) a notice was displayed indicating that the person in question was (or persons generally were) permitted to travel by or be present on the relevant train or (as the case may be) the preceding train without having a ticket or other authority¹⁰; or
- 1151 (4) a person acting or purporting to act on behalf of the operator¹¹ of the relevant train, or the operator of the station in question, indicated that the person in question was (or persons generally were) permitted to travel by or be present on the relevant train or (as the case may be) any preceding train without having a ticket or other authority¹².

However, nothing in these provisions¹³ prevents a person from being charged a penalty fare where he had been invited by anybody acting on behalf of the operator of the relevant train or any preceding train to obtain a ticket or other authority while travelling on or present on the relevant train or that preceding train¹⁴.

No person present in or leaving a compulsory ticket area¹⁵ (but who is not leaving a train) may be charged a penalty fare¹⁶ if:

- 1152 (a) there were no facilities in operation at the station (the 'relevant station') of which the compulsory ticket area formed part for the sale of the appropriate ticket or other authority to be present in that compulsory ticket area¹⁷;
- 1153 (b) the requirements of rules with respect to the display of notices were not satisfied in relation to that compulsory ticket area¹⁸;
- 1154 (c) a notice was displayed at the relevant station indicating that the person in question was (or persons generally were) permitted to be present in that compulsory ticket area without having a ticket or other authority¹⁹; or
- 1155 (d) a person acting or purporting to act on behalf of the operator of any train departing from that compulsory ticket area, or the operator of the relevant station, indicated that the person in question was (or persons in general were) permitted to be present in that compulsory ticket area without having a ticket or other authority²⁰.

1 As to persons leaving a train see PARA 397 note 1 ante. As to the meaning of 'train' for these purposes see PARA 396 note 4 ante.

2 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 6(1). As to penalty fares see also PARAS 397-399 ante, 401-404 post.

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

3 As to the meaning of 'station' for these purposes see PARA 396 note 5 ante.

4 For the meaning of 'preceding train' see PARA 399 note 7 ante.

5 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 6(2).

6 As to tickets and other authorities see PARA 397 note 4 ante.

7 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 6(2)(a).

8 For the meaning of 'rules' see PARA 397 note 2 ante.

9 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 6(2)(b).

10 Ibid reg 6(2)(c).

11 For the meaning of 'operator' see PARA 397 note 3 ante.

12 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 6(2)(d).

13 Ie nothing in ibid reg 6(1) (see the text and notes 1-2 supra) or in reg 6(2) (see the text and notes 3-12 supra): see reg 6(3).

14 Ibid reg 6(3).

15 For the meaning of 'compulsory ticket area' see PARA 397 note 1 ante.

16 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 7(1).

17 Ibid reg 7(2)(a).

18 Ibid reg 7(2)(b).

19 Ibid reg 7(2)(c).

20 Ibid reg 7(2)(d).

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401. Relevant statement.

Where a person charged a penalty fare¹ has in due time² provided the operator³ by or on whose behalf the penalty fare was charged with a relevant statement, in any proceedings for the recovery of that penalty fare⁴, it is for that operator to show that any of the facts described in the relevant statement is not true⁵.

A relevant statement is a statement in writing informing the operator in question⁶:

1156 (1) in the case of a person charged a penalty fare in circumstances where he was travelling by, present on or leaving a train⁷: (a) of the train and of any preceding train⁸ by which he was travelling or had travelled or on which he was present or had been present⁹; (b) of the station¹⁰ and the time at which he boarded that train and any preceding train and (other than in the case of his leaving a train at a station) the station at which he intended to leave that train¹¹; and (c) whether any of the circumstances in which a penalty fare is not to be charged where a person is travelling on a train¹² arose in relation to the station at which he boarded the train and any preceding train, and, if so, which¹³; and

1157 (2) in the case of a person charged a penalty fare in circumstances where he was present in or leaving a compulsory ticket area¹⁴ but was not leaving a train¹⁵: (a) whether he was proposing to travel by train, and if so, by which train and to which station, and if not so proposing to travel, the reason for his presence in the compulsory ticket area¹⁶; and (b) whether any of the circumstances in which a penalty fare is not to be charged where a person is in a compulsory ticket area¹⁷ arose in relation to the station of which the compulsory ticket area formed part and, if so, which¹⁸.

1 See further PARAS 397-400 ante, 402-404 post.

2 For these purposes, a relevant statement is provided in due time if it is provided at any time within the period of 21 days commencing with the day on which the person was charged a penalty fare: Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 9(3). As to relevant statements see heads (1) and (2) in the text.

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

3 For the meaning of 'operator' see PARA 397 note 3 ante.

4 As to the recovery of a penalty fare as a civil debt see PARA 398 note 17 ante.

5 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 9(1).

6 Ibid reg 9(2).

7 Ibid reg 9(2)(a). As to persons leaving a train see PARA 397 note 1 ante. As to the meaning of 'train' for these purposes see PARA 396 note 4 ante. See further PARAS 397-398 ante.

8 For the meaning of 'preceding train' see PARA 399 note 7 ante.

9 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 9(2)(a)(i).

10 As to the meaning of 'station' for these purposes see PARA 396 note 5 ante.

- 11 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 9(2)(a)(ii).
- 12 Ie the circumstances described in *ibid* reg 6(2) (see *PARA 400 ante*): see reg 9(2)(a)(iii).
- 13 *Ibid* reg 9(2)(a)(iii).
- 14 For the meaning of 'compulsory ticket area' see *PARA 397 note 1 ante*. See further *PARAS 397-398 ante*.
- 15 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 9(2)(b).
- 16 *Ibid* reg 9(2)(b)(i).
- 17 Ie the circumstances described in *ibid* reg 7(2) (see *PARA 400 ante*): see reg 9(2)(b)(ii).
- 18 *Ibid* reg 9(2)(b)(ii).

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402. Exclusion of double liability.

Where a person has been charged a penalty fare¹ in respect of his failure to produce a ticket or other authority² when required to do so³, and, arising from that failure, proceedings are brought against that person in respect of specified offences under other statutes⁴, that person ceases to be liable to pay the penalty fare which he has been charged, and, if he has paid it, the operator⁵ by or on whose behalf the penalty fare was charged is liable to repay to him an amount equal to the amount of that penalty fare⁶.

1 See PARA 398 ante.

2 As to tickets and other authorities see PARA 397 note 4 ante.

3 I.e. pursuant to the Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 3 (see PARA 397 ante): see reg 10(1).

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

4 I.e. an offence under the Regulation of Railways Act 1889 s 5(3)(a) or (b) (see PARA 395 ante), or an offence under any byelaw made under the Transport Act 1962 s 67 (as amended; prospectively repealed) or the Railways Act 1993 s 129 (repealed) or the Transport Act 2000 s 219 (repealed) in respect of (Railways (Penalty Fares) Regulations 1994, SI 1994/576 reg 10(2) (amended by SI 2005/1095)):

- 261 (1) his travelling by, or his presence on, a train without having previously paid his fare, or, having paid his fare for a certain distance, his travelling beyond that distance without previously paying the additional fare for the additional distance (Railways (Penalty Fares) Regulations 1994, SI 1994/576 reg 10(2)(a));
- 262 (2) his travelling by, or his presence on, a train without a ticket or other authority entitling him to travel by or be present on a train (reg 10(2)(b)); or
- 263 (3) his presence in part of a station without a ticket or other authority authorising him to be present there (reg 10(2)(c)).

As to byelaws made under the Railways Act 2005 and the provision made thereby for the continuity of byelaws made under previous legislation see PARA 18 ante. As to the meaning of 'train' for these purposes see PARA 396 note 4 ante; and as to the meaning of 'station' see PARA 396 note 5 ante.

5 For the meaning of 'operator' see PARA 397 note 3 ante.

6 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 10(1).

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403. Power to make rules.

The Office of Rail Regulation¹ may make rules² to make provision for and in connection with³:

- 1158 (1) the imposition of requirements on persons travelling by, being present on or leaving trains⁴ or being present in or leaving compulsory ticket areas⁵ to produce a ticket or other authority⁶ authorising them to travel by, or be present on or leave the train in question or to be present in or leave the compulsory ticket area in question⁷;
- 1159 (2) the charging of persons in breach of such requirements to penalty fares⁸; and
- 1160 (3) with respect to any of the specified matters referred to in the enabling statute⁹.

Rules made pursuant to this power¹⁰ have effect as if they were regulations¹¹.

1 As to the Office of Rail Regulation see PARA 49 et seq ante.

2 This power to make rules is subject to the provisions of the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) (see PARAS 397-402 ante, 404 post): see reg 11(1). For the meaning of 'rules' see PARA 397 note 2 ante.

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

3 Ibid reg 11(1); Interpretation Act 1978 s 17(2).

4 As to persons leaving a train see PARA 397 note 1 ante. As to the meaning of 'train' see PARA 396 note 4 ante.

5 For the meaning of 'compulsory ticket area' see PARA 397 note 1 ante. See further PARAS 397-398 ante.

6 As to tickets and other authorities see PARA 397 note 4 ante.

7 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 11(1)(a).

8 Ibid reg 11(1)(b).

9 Ibid reg 11(1). The text refers to any of the matters referred to in the Railways Act 1993 s 130(2), (4) (s 130(2) as amended) (see PARA 396 ante): see the Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 11(1). However, nothing in the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) confers on the Office of Rail Regulation power to make rules to make provision for or with respect to any matter specified as follows:

264 (1) the amount, or the greatest amount, which a person may be charged by way of penalty fare, whether a specified amount or one determined in a prescribed manner (see the Railways Act 1993 s 130(2)(d); and PARA 396 ante);

265 (2) the recovery of any unpaid penalty fare as a civil debt, including provision: (a) for or with respect to defences that are to be available in proceedings for the recovery of an unpaid penalty fare; or (b) for presumptions of fact to operate, in such proceedings, in favour of the person charged with the penalty fare, but subject to compliance with prescribed procedural requirements (see the Railways Act 1993 s 130(2)(l); and PARA 396 ante);

- 266 (3) the prevention of a person's being liable both to payment of a penalty fare and to prosecution for a prescribed offence (see the Railways Act 1993 s 130(2)(o); and PARA 396 ante):

Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 11(2); Interpretation Act 1978 s 17(2).

10 le pursuant to the Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 11: see reg 11(3).

11 Ibid reg 11(3).

As to rules made under this provision see the Penalty Fares Rules 1997 (April 1997), published by the Office of Rail Regulation, which, at the date at which this volume states the law, is available at the Office of Rail Regulation's website (<http://www.rail-reg.gov.uk>).

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404. Requirement to give name and address.

A person charged a penalty fare¹ must give his name and address to the authorised collector² when so required³. Any person who fails to do so⁴ is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale⁵.

1 Ie pursuant to the Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 4 (see PARA 398 ante): see reg 12(1).

2 For the meaning of 'authorised collector' see PARA 397 note 9 ante.

3 Railways (Penalty Fares) Regulations 1994, SI 1994/576, reg 12(1).

As to the statutory basis for the Railways (Penalty Fares) Regulations 1994, SI 1994/576 (as amended) see PARA 396 ante.

4 Ie fails to give his name and address in accordance with *ibid* reg 12(1) (see the text and notes 1-3 *supra*): see reg 12(2).

5 *Ibid* reg 12(2). As to the standard scale see PARA 370 note 7 ante.

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(v) Offences in relation to Level Crossings

405. Public level crossings.

Under the Highway (Railway Crossings) Act 1839, wherever a railroad crosses a highway¹ the railway company² must make and maintain good and sufficient gates at each end of the highway at each crossing and must employ gatekeepers to open and shut the gates for the safe passage of persons, carts and carriages³.

Under the Railways Clauses Act 1863, a railway undertaker must, for the greater convenience and security of the public, erect and maintain a lodge at a public carriage road⁴ crossed by a railway on the level. If the undertaker fails to erect or maintain such a lodge it is liable to a penalty⁵. Subject to the same penalty, the undertaker must abide by any regulations made by the Secretary of State⁶ for the crossing or the speed of trains over it⁷.

Where the Secretary of State has directed that the gates on any level crossing over a public road are to be kept closed in accordance with his direction except when engines or vehicles passing along the railway have occasion to cross the road⁸, then, if the person entrusted with the care of the gates fails to comply with the direction of the Secretary of State, he is liable on summary conviction to a penalty⁹ for each offence¹⁰.

If any person omits to shut and fasten any gate or to lower any barrier set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriage, cattle or other animals under his care have passed through the same, he is liable to be fined for every such offence any sum not exceeding level 3 on the standard scale¹¹.

1 'Highway' is not defined in the Highway (Railway Crossings) Act 1839; but for the meaning of 'highway' at common law see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 1 et seq.

2 As to railway undertakers see PARA 326 note 1 ante.

3 See the Highway (Railway Crossings) Act 1839 s 1 (amended by the Statute Law Revision (No 2) Act 1890; and the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 12, Schedule); and PARA 355 ante.

4 The offence of failing to erect or maintain such a lodge applies to any public carriage road crossed on the level by the railway and is not limited to such similar roads as are specifically mentioned in the special Act; an occupation road may in fact be a public carriage road: *R v Longe* (1897) 66 LJQB 278, DC.

5 The undertaker is liable to a penalty not exceeding level 2 on the standard scale and £10 for every day during which the offence continues: see the Railways Clauses Act 1863 s 6 (as amended: see note 7 infra). As to the standard scale see PARA 370 note 7 ante.

6 As to the Secretary of State see PARA 35 ante.

7 Railways Clauses Act 1863 s 6 (amended by the Criminal Justice Act 1982 s 46).

8 See the Road and Rail Traffic Act 1993 s 42(1) (as amended); and PARA 355 ante.

9 The penalty is a fine at level 1 on the standard scale: *ibid* s 42(1) (amended by the Criminal Justice Act 1982 s 46).

10 Road and Rail Traffic Act 1993 s 42(1) (as amended: see note 9 supra).

11 See the Railways Clauses Consolidation Act 1845 s 75 (amended by the Transport and Works Act 1992 s 49).

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406. Private level crossings.

A person who fails¹ to comply with any requirement, restriction or prohibition conveyed by a crossing sign² lawfully placed³ on or near a private road or path near a place where it crosses a railway⁴ or tramway⁵ is guilty of an offence⁶.

In any proceedings for such an offence⁷, a crossing sign on or near a private road or path near a place where it crosses a railway or tramway is taken to have been lawfully placed there unless the contrary is proved⁸.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

1 For these purposes, 'fail' includes refuse: Transport and Works Act 1992 s 56(1).

2 For these purposes, 'crossing sign', in relation to a private road or path and any place where it crosses a railway or tramway, means any object or device (whether fixed or portable), or any line or mark on the road or path, for conveying to users of the road or path warnings, information, requirements, restrictions or prohibitions relating to the crossing; 'cross' means cross otherwise than by tunnel or bridge; and 'private road or path' means any length of road or path to which the public does not have access: see *ibid* s 56(1).

3 'Lawfully placed' means placed in accordance with *ibid* ss 52-54 (as amended) (see PARA 357 *et seq ante*): s 56(1). 'Place' includes erect and (in relation to a sign) display: s 56(1).

4 For the meaning of 'railway' see PARA 302 note 4 *ante*.

5 For the meaning of 'tramway' see PARA 302 note 4 *ante*.

6 Transport and Works Act 1992 s 55(1).

7 As to the institution of proceedings in England and Wales in respect of an offence under *ibid* Pt II (ss 26-59) (as amended) see PARA 372 note 2 *ante*.

8 *Ibid* s 55(2).

9 *Ibid* s 55(3). As to the standard scale see PARA 370 note 7 *ante*.

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(vi) Trespass and Removal of Passengers

407. Penalty for trespass.

If any person wilfully trespasses on any railway¹ or on any of the stations or other works or premises connected with it and refuses to quit it on request by any officer or agent of the railway company², that person and anyone aiding or assisting him³ will, upon conviction by a magistrates' court, at the discretion of the court, be imprisoned for a term not exceeding one month or be liable to a fine not exceeding level 1 on the standard scale⁴; and in default of payment will or may be imprisoned⁵.

1 For the meaning of 'railway' see PARA 384 note 2 ante.

2 For the meaning of 'company' see PARA 384 note 2 ante.

3 In *Roberts v Preston* (1860) 9 CBNS 208, the defendant, who was the owner of a wall close to the railway, ordered men to repair the wall by entering on the railway and putting materials on it. The men were requested to quit but the defendant told the men to remain and it was held that he was properly convicted for the wilful obstruction of the railway's agent and the free passage of the railway.

4 See the Railway Regulation Act 1840 s 16 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law Revision (No 2) Act 1888; the Statute Law Revision Act 1892; the Magistrates' Courts Act 1952 ss 132, 133(2), Sch 6; the British Railways Act 1965 s 35(1); the London Transport Act 1965 s 34(1); the Criminal Justice Act 1982 s 46; and the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 Pt 1 para 3). As to the standard scale see PARA 370 note 7 ante; and as to the modification of the penalty as it applies to Concessionaires and through service operators relating to the Channel Tunnel see the Channel Tunnel Act 1987 Sch 6 para 4.

As from a day to be appointed under the Criminal Justice Act 2003 s 336(3), the words 'one month' in the phrase 'term not exceeding one month' in the Railway Regulation Act 1840 s 16 (as amended) are repealed and substituted so that the term becomes one not exceeding 51 weeks: see s 16 (as so amended; prospectively further amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 1). However, at the date at which this volume states the law, no such day had been appointed.

5 See the Railway Regulation Act 1840 s 16 (as amended: see note 4 supra).

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408. Right to exclude trespassers.

Railway undertakers are entitled to forbid unauthorised persons to enter or remain on their land in the same way as any other owners of land and, if a person not using or desiring to use the railway enters on to an undertaker's premises and remains there after being requested to leave, he commits a wilful trespass¹. Undertakers may exclude from a station all persons other than those who use or wish to use the railway². Even though an intending passenger has a right to enter a station, a person conveying or accompanying that person to a railway does not necessarily have a right to enter the station³.

Where an undertaker licenses one person to ply for hire on, or otherwise use its premises, no other person carrying on a similar business has any right, without licence, so to do⁴. In the admission of cabs to a railway station in London, or in the treatment of cabs while in such a station, the company having control of the station must not show any preference to any cab (or give any cab a privilege) which is not given to other cabs⁵.

1 *Perth General Station Committee v Ross* [1897] AC 479 at 492, HL, per Lord MacNaghten.

2 *Perth General Station Committee v Ross* [1897] AC 479, HL; *Hole v Digby* (1879) 27 WR 884, DC.

3 See *Barker v Midland Rly Co* (1856) 18 CB 46, where an omnibus proprietor seeking to enter a station with an omnibus bringing passengers was excluded; approved in *Perth General Station Committee v Ross* [1897] AC 479 at 492, 493, HL.

4 *Beadell v Eastern Counties Rly Co* (1857) 2 CBNS 509; *Hole v Digby* (1879) 27 WR 884, DC. When only certain cab owners were privileged to ply for hire within a station, a non-privileged cabman refusing to quit on request was held guilty of a wilful trespass: *Foulger v Steadman* (1872) LR 8 QB 65. Where a cabman who brings a person to a station has concluded his business he must, on request, leave the station or else he is a trespasser and may be removed by force: *Wood v North British Rly Co* (1899) 2 F 1, Ct of Sess. However, the Office of Fair Trading has ruled that undertakers must allow every licensed taxi to ply for hire at a station subject only to physical restraints and on payment of a reasonable fee.

5 See the London Cab and Stage Carriage Act 1907 s 2 (as amended); and ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1493. Transport for London may suspend or modify the provision which is set out in the text and may limit charges made in respect of the admission of any cab to a railway station for the purpose of plying for hire therein: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1493.

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409. Ouster of jurisdiction of the court.

Where a person is charged before a magistrates' court with wilful trespass, a bona fide claim by that person of a right upon the premises ousts the jurisdiction of the court, provided the claim is one which, on the evidence, is capable of existing at law¹. However, if the claim of right is impossible at law the court has jurisdiction², and a mere belief in a right, although bona fide, is not sufficient to oust jurisdiction³. Railway undertakers may dedicate land as a highway and so there may be a public right of way over a railway⁴. Where a public right of way existed before the railway was made, such right is not extinguished merely by the making of the railway, with the result that a magistrates' court has no jurisdiction where a person charged with trespass sets up a bona fide claim to have been on the railway in exercise of such a right⁵.

1 *Foulger v Steadman* (1872) LR 8 QB 65; *Wilkinson v Goffin* (1876) 33 LT 824; *Cole v Miles* (1888) 60 LT 145, DC; *Arnold v Morgan* [1911] 2 KB 314, DC. However, where a cabman was charged with trespassing and refusing to quit and he raised the defence that the place which he was asked to quit was a public road and not the private road of the company, the magistrates' court had jurisdiction to determine the title to the land: *London, Brighton and South Coast Rly Co v Fairbrother* (1900) 16 TLR 167, DC.

2 *Arnold v Morgan* [1911] 2 KB 314, DC.

3 *Foulger v Steadman* (1872) LR 8 QB 65. In *Jones v Taylor* (1858) 1 E & E 20, a wagon was on the railway by permission of a railway company and the defendant had been forbidden by the company to come onto its premises but, acting under a contract with the owner of the wagon, he came onto the railway and refused to leave when requested. The magistrates' court refused to convict him on a charge of wilful trespass and the Court of Queen's Bench refused to interfere with the decision. This decision, however, has been doubted in both *Foulger v Steadman* supra, and in *Perth General Station Committee v Ross* [1897] AC 479, HL.

4 *Arnold v Morgan* [1911] 2 KB 314, DC; *A-G v London and South Western Rly Co* (1905) 69 JP 110; *South Eastern Rly Co v Warr* (1923) 21 LGR 669, CA. See *British Transport Commission v Westmorland County Council* [1958] AC 126, [1957] 2 All ER 353, HL; and PARA 334 ante. Where a railway crossed a highway by a level crossing and the defendant company had power to lay pipes under highways and break up soil for such purpose, but to convey wires 'directly but not otherwise across any railway', it was held that the defendants had no power to disturb the soil of the railway at the crossing: *South Eastern Rly Co v European and American Electric Printing Telegraph Co* (1854) 9 Exch 363.

5 *Cole v Miles* (1888) 60 LT 145, DC; *Arnold v Morgan* [1911] 2 KB 314, DC. In Scotland, however, it has been held to be no defence to a summons for crossing a railway where there was no authorised crossing that, before the railway was made, there was a public right of way at that place which had never been extinguished: *Caledonian Rly Co v Walmsley* 1907 SC 1047, Ct of Sess. The question whether dedication is compatible with the use of the railway for statutory purposes is one of fact: *British Transport Commission v Westmorland County Council* [1958] AC 126, [1957] 2 All ER 353, HL. See also *South Eastern Rly Co v Warr* (1923) 21 LGR 669, CA, where 30 years' user of a crossing as a highway was held to establish dedication; and *South Eastern Rly Co v Cooper* [1924] 1 Ch 211, CA.

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410. Penalty for trespassing on railways.

Any person who is or passes upon any railway¹ except for the purpose of crossing it at an authorised crossing², after having once received warning by the railway company³ or by any of its servants or agents not to go or pass on it, is liable to a fine for each offence⁴.

1 For the meaning of 'railway' for these purposes see PARA 341 note 1 ante.

2 As to level crossings generally see PARA 352 et seq ante.

3 For the meaning of 'company' see PARA 341 note 2 ante.

4 Regulation of Railways Act 1868 s 23 (amended by the Regulation of Railways Act 1871 s 14; and the Criminal Justice Act 1982 s 46). The maximum fine is level 1 on the standard scale: Regulation of Railways Act 1868 s 23 (as so amended). As to the standard scale see PARA 370 note 7 ante.

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411. Removal of trespassers and persons misconducting themselves.

A trespasser or a visitor whose licence has been effectually revoked may be removed from the premises of a railway undertaker and, if he resists, reasonable force may be used to expel him¹.

An employee of a railway undertaker has authority to remove from the undertaker's premises or trains persons misconducting themselves². However, if a porter erroneously believes that a passenger has misconducted himself and forcibly removes him, the undertaker is liable in damages for the tort of its employee³, although a corporation will not be held to have impliedly authorised its employees to do something which the corporation may not lawfully do⁴. If, in the performance of a general duty, an employee disobeys a particular order, the undertaker may nevertheless be responsible for his acts⁵.

Thus, although it is within the scope of a porter's authority to prevent persons travelling in wrong trains if, in the mistaken belief that a passenger is in the wrong train, a porter forcibly pulls him from the train and injures him, the undertaker is liable for the porter's act even though it was committed in disobedience of particular instructions given to him⁶.

No one has a right to enter a train except under a contract of carriage and a person entering a train without previously having purchased a ticket may be removed from the carriage even though he is willing to pay the fare⁷. The failure to produce a ticket on demand is prima facie evidence of fraud⁸. However, it is not conclusive and, if a passenger has duly purchased a ticket but fails to produce it on demand because he has mislaid it and refuses to pay again, he may not be removed from the carriage; if he is removed he has a right of action for assault against the undertaker⁹. Where an undertaker chooses to waive the benefit of any byelaw or regulation made entirely in its own interest, it may not remove a person from a train for disobeying that byelaw or regulation, except at the risk of an action for damages¹⁰.

1 See generally TORT vol 97 (2010) PARA 576. A railway passenger has no easement over the railway: *Butler v Manchester, Sheffield and Lincolnshire Rly Co* (1888) 21 QBD 207 at 211, CA, per Lord Esher MR.

2 *Lowe v Great Northern Rly Co* (1893) 62 LJQB 524.

3 *Lowe v Great Northern Rly Co* (1893) 62 LJQB 524; *Hutchins v LCC* (1915) 85 LJKB 1177, HL; *Whittaker v LCC* [1915] 2 KB 676, DC.

4 *Ormiston v Great Western Rly Co* [1917] 1 KB 598 at 602 per Rowlatt J. See also PARA 257 ante.

5 *Bayley v Manchester, Sheffield and Lincolnshire Rly Co* (1873) LR 8 CP 148, Ex Ch.

6 *Bayley v Manchester, Sheffield and Lincolnshire Rly Co* (1873) LR 8 CP 148, Ex Ch.

7 *M'Carthy v Dublin, Wicklow and Wexford Rly Co* (1870) IR 5 CL 244. It is doubtful whether the decision in this case would be upheld now as (outside compulsory ticket areas) in practice tickets can be bought on the train.

8 *Saunders v South Eastern Rly Co* (1880) 5 QBD 456 at 461, DC, per Cockburn CJ.

9 *Butler v Manchester, Sheffield and Lincolnshire Rly Co* (1888) 21 QBD 207, CA. However, where the ticket incorporates a condition that the passenger will produce his ticket on demand or, failing to do so, will pay, although he may not be forcibly removed for failing to produce the ticket, the undertaker may recover by action the amount he has contracted to pay on such failure: *Butler v Manchester, Sheffield and Lincolnshire Rly Co* supra.

10 *Jennings v Great Northern Rly Co* (1865) LR 1 QB 7. As to byelaws see PARA 18 ante.

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(vii) Information Offences

A. FAILURE TO COMPLY WITH NOTICES REQUESTING INFORMATION

412. Failures associated with notices requiring information from licence holders.

A licence holder¹ who intentionally alters, suppresses or destroys any document which he has been lawfully required to produce by notice² signed by the Secretary of State³ or by the Office of Rail Regulation⁴ (as the case may be) is guilty of an offence⁵.

1 For the meaning of 'licence holder' see PARA 83 note 6 ante.

2 Ie under the Railways Act 1993 s 80(4) (as amended): see s 80(7); and PARA 34 ante.

3 As to the general duties of the Secretary of State under the *ibid* Pt I (ss 4-83) (as amended) see s 4 (as amended); and PARA 33 ante; and as to the Secretary of State generally see PARA 35 ante.

4 As to the general duties of the Office of Rail Regulation under *ibid* Pt I (as amended) see s 4 (as amended); and PARA 33 ante; and as to the Office of Rail Regulation see PARA 49 et seq ante.

5 *Ibid* s 80(7). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine: s 80(7). As to the statutory maximum see PARA 367 note 6 ante. As to offences committed by bodies corporate see s 147; and PARA 428 post.

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413. Failures associated with notices requiring information for enforcement purposes.

A person who, without reasonable excuse, fails to do anything required of him by a notice¹ signed by an appropriate authority² to whom it appears that a relevant operator³ may have contravened or be contravening a relevant condition or requirement⁴, or a final or provisional order⁵ made by the appropriate authority for enforcement purposes, is guilty of an offence⁶.

A person who intentionally alters, suppresses⁷ or destroys any document which he has been required by any such notice to produce also is guilty of an offence⁸.

1 le a notice under the Railways Act 1993 s 58 (as amended) (see PARA 179 ante).

2 For the meaning of 'appropriate authority' for these purposes see PARA 179 note 1 ante.

3 For the meaning of 'relevant operator' for these purposes see PARA 179 note 2 ante.

4 For the meaning of 'relevant condition or requirement' for these purposes see PARA 179 note 3 ante. As to the meaning of 'contravention' in relation to any condition see PARA 29 note 13 ante.

5 For the meanings of 'final order' and 'provisional order' for these purposes see PARA 179 note 4 ante.

6 Railways Act 1993 s 58(4). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: s 58(4). As to the standard scale see PARA 370 note 7 ante. As to offences committed by bodies corporate see s 147; and PARA 428 post.

7 As to the meaning of references to suppressing a document for these purposes see PARA 179 note 13 ante.

8 Railways Act 1993 s 58(5). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine: s 58(5). As to the statutory maximum see PARA 367 note 6 ante.

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414. Failures associated with notices requiring information for railway safety functions.

It is an offence for a person to contravene a requirement imposed by a notice served¹ on any person for the purpose of obtaining information which the Office of Rail Regulation² needs for the carrying out of its safety functions³. A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum⁴ and, on conviction on indictment, to a fine⁵.

1 I.e. a notice served under the Railways Act 2005 s 2, Sch 3 para 11 (see PARA 201 ante); see Sch 3 para 11(8)(a). For the meaning of 'notice' see PARA 34 note 4 ante; definition applied by s 58(2). As to the meaning of 'contravene' see PARA 70 note 23 ante.

2 As to the Office of Rail Regulation see PARA 49 et seq ante.

3 Railways Act 2005 Sch 3 para 11(8)(a). As to the safety functions of the Office of Rail Regulation see PARA 195 et seq ante.

4 Ibid Sch 3 para 11(9)(a). As to the statutory maximum see PARA 367 note 6 ante.

5 Ibid Sch 3 para 11(9)(b)(i).

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415. Failures associated with notices requiring information for transfer schemes.

A person who intentionally alters, suppresses¹ or destroys a document which he has been required to produce by a notice issued by a scheme authority in relation to a transfer scheme² is guilty of an offence³.

1 For these purposes, the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form: Railways Act 2005 s 12(7), Sch 2 para 11(10).

2 I.e. a notice under ibid Sch 2 para 11(4) (see PARA 144 ante): see Sch 2 para 11(7). The text refers to a scheme under s 12 for the transfer, at or after the end of the franchise period, of relevant franchise assets (see PARA 140 ante).

3 Ibid Sch 2 para 11(7). A person guilty of such an offence as is mentioned in the text is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine: Sch 2 para 11(7). As to the statutory maximum see PARA 367 note 6 ante. As to offences committed by bodies corporate see s 147; and PARA 428 post.

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B. FALSE STATEMENTS

416. Offence of making false statements under the Railways Act 1993.

If any person¹, in giving any information² or making any application under or for the purposes of any provision of the Railways Act 1993 (or of any regulations made under the Railways Act 1993) makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is guilty of an offence and is liable, on summary conviction, to a fine not exceeding the statutory maximum³ or, on conviction on indictment, to a fine⁴. No proceedings are to be instituted in England and Wales⁵ in respect of such an offence except by or with the consent of the Secretary of State⁶ or the Director of Public Prosecutions⁷.

1 As to offences committed by bodies corporate see the Railways Act 1993 s 147; and PARA 428 post.

2 As to the protection of information obtained under or by virtue of the provisions of the Railways Act 1993 see s 145 (as amended); and PARA 419 post.

3 As to the statutory maximum see PARA 367 note 6 ante.

4 Railways Act 1993 s 146(1).

5 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

6 As to the Secretary of State see PARA 35 ante. Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).

7 Ibid s 146(2). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(vii) Information Offences/B. FALSE STATEMENTS/417. Offence of making false statements in relation to a European licence.

417. Offence of making false statements in relation to a European licence.

If any person, in giving any information or making any application under or for the purposes of any of the provisions which govern the licensing of railway undertakings under the regime applicable throughout the EEA states¹, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is guilty of an offence². No proceedings may be instituted in England or Wales³ in respect of such an offence⁴ except by or with the consent of the Secretary of State⁵ or the Director of Public Prosecutions⁶.

1 Ie the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (as to which see PARA 93 et seq ante): see reg 16(1). For the meaning of 'railway undertaking' see PARA 93 note 1 ante.

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 93 note 1 ante.

2 Ibid reg 15(1). A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum (reg 15(1)(a)) or, on conviction on indictment, to a fine (reg 15(1)(b)). As to the statutory maximum see PARA 367 note 6 ante. As to liability for offences under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 429 post.

3 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

4 Ie an offence under the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 15.

5 As to the Secretary of State see PARA 35 ante.

6 Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 15(2). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

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418. Offence of making false statements in relation to infrastructure access and management.

If any person, in giving any information or making any application under or for the purposes of any of the provisions which govern access to and the management of the railway infrastructure for railway undertakings established in EEA states¹, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is guilty of an offence². No proceedings may be instituted in England or Wales³ in respect of such an offence⁴ except by or with the consent of the Secretary of State⁵ or the Director of Public Prosecutions⁶.

1 Ie the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 (see PARA 109 et seq ante). For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

2 Ibid reg 37(1). A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum (reg 37(1)(a)) or, on conviction on indictment, to a fine (reg 37(1)(b)). As to the statutory maximum see PARA 367 note 6 ante. As to liability for offences under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 431 post.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 7 (regs 33-40) see PARA 109 note 3 ante.

3 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.

4 Ie an offence under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 37.

5 As to the Secretary of State see PARA 35 ante.

6 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 37(2). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

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C. IRREGULAR DISCLOSURE OF INFORMATION

419. General restrictions on disclosure of information under the Railways Act 1993.

No information with respect to any particular business which:

- 1161 (1) has been obtained under or by virtue of any of the provisions of the Railways Act 1993¹; and
- 1162 (2) relates to the affairs of any individual or to any particular business²,

is³ to be disclosed, during the lifetime of that individual or so long as that business continues to be carried on, without the consent of that individual or the person for the time being carrying on that business⁴. This general restriction⁵, however, does not apply to any disclosure of information which is made:

- 1163 (a) for the purpose of facilitating the carrying out by the Secretary of State⁶, the Office of Rail Regulation or the Competition Commission of any of his or (as the case may be) its functions⁷ under the Railways Act 1993, the Transport Act 2000 or the Railways Act 2005⁸;
- 1164 (b) for the purpose of facilitating the carrying out or carrying on by the Secretary of State of any other functions of his in relation to railways or railway services⁹;
- 1165 (c) for the purpose of facilitating the carrying out by: (i) any Minister of the Crown¹⁰; (ii) the Office of Fair Trading¹¹; (iii) the Competition Commission¹²; (iv) the Office of Communications¹³; (v) the Gas and Electricity Markets Authority¹⁴; (vi) the Director General of Water Supply¹⁵; (vii) the Civil Aviation Authority¹⁶; (viii) the Insolvency Practitioners Tribunal¹⁷; or (ix) a local weights and measures authority in Great Britain¹⁸, of any of his (or, as the case may be, its) functions under any of the enactments or instruments specified for this purpose¹⁹;
- 1166 (d) for the purpose of enabling or assisting the Secretary of State, the Treasury²⁰ or the Financial Services Authority²¹ to exercise any powers conferred by or under the Financial Services and Markets Act 2000 or by the enactments relating to companies or insolvency²² or for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions²³;
- 1167 (e) for the purpose of enabling or assisting an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of the Insolvency Act 1986²⁴ to carry out its functions as such²⁵;
- 1168 (f) for the purpose of facilitating the carrying out by the Health and Safety Commission or the Health and Safety Executive²⁶ of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority²⁷, of any functions under a relevant statutory provision, within the meaning of the Health and Safety at Work etc Act 1974²⁸;
- 1169 (g) for the purpose of facilitating the carrying out by the Comptroller and Auditor General²⁹ of any of his functions under any enactment³⁰;

- 1170 (h) for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of his functions under any instrument made for the purpose of implementing relevant EC Council Directives³¹;
- 1171 (i) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings³²;
- 1172 (j) for the purposes of any civil proceedings brought under or by virtue of the Railways Act 1993 or under any of the same enactments or instruments specified for the purposes of head (c) above³³; or
- 1173 (k) in pursuance of a Community obligation³⁴.

Any person who discloses any information in contravention of this restriction³⁵ is guilty of an offence and is liable, on summary conviction, to a fine not exceeding the statutory maximum³⁶ or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both³⁷.

1 Railways Act 1993 s 145(1)(a).

2 Ibid s 145(1)(b).

3 Ie subject to ibid s 145(2)-(6A) (as amended) (see the text and notes 5-37 infra): see s 145(1). However, nothing in s 145(1) is to be construed:

267 (1) as limiting the matters which may be published under s 71 (as amended) (see PARA 55 ante) or may be included in (or made public as part of) a report of the Office of Rail Regulation, the Competition Commission or the Rail Passengers Council under any provision of Pt I (ss 4-83) (as amended) (s 145(5)(a) (amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 1 paras 1, 3(a); the Railways Act 2005 ss 54(4), 59(6), Sch 11, PARAS 1, 16(2), Sch 13 Pt 1; and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b));

268 (2) as applying to any information: (a) which has been so published or has been made public as part of such a report (Railways Act 1993 s 145(5)(b)(i)); or (b) which has otherwise been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by s 145 (as amended) (s 145(5)(b)(ii)).

Nor does anything in s 145(1) prevent the transfer of records in accordance with the Public Records Act 1958 s 3(4) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 839): Railways Act 1993 s 145(5A) (added by the Transport Act 2000 s 252, Sch 27 paras 17, 41(1), (3)). Information obtained by the Office of Rail Regulation in the exercise of functions which are exercisable concurrently with the Office of Fair Trading under the Competition Act 1998 Pt 1 (ss 1-60) (as amended) (see COMPETITION vol 18 (2009) PARA 115 et seq) is subject to the Enterprise Act 2002 Pt 9 (ss 237-247) (as amended) (information: see COMPETITION and is not subject to the Railways Act 1993 s 145(1)-(6) (as amended): s 145(6A) (added by the Competition Act 1998 s 54(3), Sch 10 para 15(10); amended by the Enterprise Act 2002 s 278(1), Sch 25 para 30(1), (14)(c); and the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a)). As to the Office of Rail Regulation see PARA 49 et seq ante; and as to the Rail Passengers' Council see PARA 68 ante. As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

4 Railways Act 1993 s 145(1).

5 Ie the restriction contained in ibid s 145(1) (see the text and notes 1-4 supra): see s 145(2).

The power contained in s 145(2) (as amended), so far as it authorises the disclosure of information, is extended for the purposes of the Anti-terrorism, Crime and Security Act 2001: see s 17, Sch 4 Pt 1 para 34; and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 395.

6 As to the Secretary of State see PARA 35 ante. References to the Secretary of State in heads (a) and (b) in the text are to the Scottish Ministers also: see ibid s 145(2)(a) (as amended) (see head (a) in the text), s 145(2)(aa) (as added) (see head (b) in the text). As to the Scottish Ministers see PARA 124 note 7 ante.

7 As to the meaning of 'functions' see PARA 7 note 12 ante.

8 Railways Act 1993 s 145(2)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt 1 paras 1, 3(a); the Railways Act 2005 Sch 11 paras 1, 16(1)(a), Sch 13 Pt 1; and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)).

9 Railways Act 1993 s 145(2)(aa) (added by the Railways Act 2005 Sch 11 paras 1, 16(1)(b)). See note 6 *supra*.

10 Railways Act 1993 s 145(2)(b)(i).

11 *Ibid* s 145(2)(b)(ii) (substituted by the Enterprise Act 2002 Sch 25 para 30(1), (14)(a)). As to the Office of Fair Trading generally see COMPETITION vol 18 (2009) PARA 6 *et seq*.

12 Railways Act 1993 s 145(2)(b)(iii) (amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 33(b)).

13 Railways Act 1993 s 145(2)(b)(iv) (substituted by the Communications Act 2003 s 406(1), Sch 17 para 127(1), (2)). As to the Office of Communications see TELECOMMUNICATIONS vol 97 (2010) PARA 2 *et seq*.

14 Railways Act 1993 s 145(2)(b)(v) (amended by virtue of the Utilities Act 2000 s 3(2)). As to the Gas and Electricity Markets Authority see FUEL AND ENERGY.

15 Railways Act 1993 s 145(2)(b)(vi). As to the Director General of Water Services see WATER AND WATERWAYS vol 101 (2009) PARA 110.

16 *Ibid* s 145(2)(b)(viii). As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 *et seq*.

17 *Ibid* s 145(2)(b)(ix). As to the Insolvency Practitioners Tribunal see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

18 *Ibid* s 145(2)(b)(x). For the meaning of 'Great Britain' see PARA 29 note 3 *ante*. As to local weights and measures authorities in Great Britain see WEIGHTS AND MEASURES.

19 *Ibid* s 145(2)(b). The enactments and instruments referred to in s 145(2)(b) are: (1) the Trade Descriptions Act 1968; (2) the Fair Trading Act 1973; (3) the Consumer Credit Act 1974; (4) the Estate Agents Act 1979; (5) the Competition Act 1980; (6) the Telecommunications Act 1984; (7) the Airports Act 1986; (8) the Gas Act 1986; (9) the Insolvency Act 1986; (10) the Consumer Protection Act 1987; (11) the Electricity Act 1989; (12) the Property Misdescriptions Act 1991; (13) the Water Industry Act 1991; (14) the Water Resources Act 1991; (15) the Competition Act 1998; (16) the Transport Act 2000 Pt I (ss 1-107) (as amended) (air transport); (17) the Enterprise Act 2002; (18) the Communications Act 2003; (19) any subordinate legislation made for the purpose of securing compliance with the EC Council Directive 84/450 (OJ L250, 19.9.84, p 17) on the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising: see the Railways Act 1993 s 145(3) (amended by the Competition Act 1998 s 74(3), Sch 10 para 15(9), Sch 14 Pt I; the Enterprise Act 2002 Sch 25 para 30(1), (14)(b); the Communications Act 2003 Sch 17 para 127(1), (3); and the Transport Act 2000 (Consequential Amendments) Order 2001, SI 2001/4050, art 2, Schedule Pt IV para 23).

The Secretary of State may by order provide that the Railways Act 1993 s 145(2), (3) (as amended) has effect subject to such modifications as are specified in the order: s 145(4). As to the meaning of 'modifications' see PARA 33 note 46 *ante*. At the date at which this volume states the law no such orders had been made under s 145.

20 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

21 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 4.

22 Railways Act 1993 s 145(2)(c) (substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 343).

23 Railways Act 1993 s 145(2)(ca) (added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 343).

24 *Ie* for the purposes of the Insolvency Act 1986 s 391 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 48); see the Railways Act 1993 s 145(2)(d).

25 *Ibid* s 145(2)(d).

26 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

27 *Ie* within the meaning of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 *et seq*); see the Railways Act 1993 s 145(2)(e).

28 *Ibid* s 145(2)(e).

29 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

30 Railways Act 1993 s 145(2)(f).

31 Ibid s 145(2)(ga) (added by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, reg 3, Sch 1 Pt 1 para 3(1), (9)), the Railways Act 1993 s 145(2)(gb) (added by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 2(4), Sch 1 Pt 1 para 4(e)(ii)).

The Directives referred to in the text are Council Directive 91/440/EEC (OJ L237, 24.08.1991, p 25) (as amended) and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L75, 15.03.2001, p 29) (as amended) (see PARA 30 et seq ante) (see the Railways Act 1993 s 145(2)(gb) (as added)) and Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L143, 27.06.1995, p 70) (as amended) (see PARA 30 et seq ante) (see the Railways Act 1993 s 145(2)(ga) (as added)).

As to the application with modifications of the Railways Act 1993 s 145 (as amended) for the purposes of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, see reg 39 (cited in PARA 110 ante); and for the purposes of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, see reg 18 (cited in PARA 94 note 9 ante).

32 Railways Act 1993 s 145(2)(h).

33 Ibid s 145(2)(j).

34 Ibid s 145(2)(k).

35 Ie in contravention of ibid s 145 (as amended): see s 145(6).

36 As to the statutory maximum see PARA 367 note 6 ante.

37 Railways Act 1993 s 145(6). As to offences committed by bodies corporate see s 147; and PARA 428 post.

UPDATE

419 General restrictions on disclosure of information under the Railways Act 1993

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 19--Railways Act 1993 s 145(3) amended: SI 2008/1277.

NOTE 27--Railways Act 1993 s 145(2)(e) amended: SI 2008/960.

NOTE 31--Railways Act 1993 s 145(2)(gb) amended: SI 2009/1122.

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420. Irregular use of information disclosed pursuant to the railway safety functions.

It is an offence for a person to use information about an undertaking obtained by means of an authorised disclosure¹ to the Office of Rail Regulation² by a Minister of the Crown or government department in contravention³ of the prohibition on the use of that information for purposes other than the safety functions of that Office⁴. A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum⁵ or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both⁶.

1 I.e. a disclosure that is authorised by the Railways Act 2005 s 2, Sch 3 para 11(5) (see PARA 201 ante): see Sch 3 para 11(8)(b).

2 As to the Office of Rail Regulation see PARA 49 et seq ante.

3 As to the meaning of 'contravene' see PARA 70 note 23 ante.

4 Railways Act 2005 Sch 3 para 11(8)(b). The text refers to the use of information in contravention of Sch 3 para 11(7) (see PARA 201 ante): see Sch 3 para 11(8)(b). As to the safety functions of the Office of Rail Regulation see PARA 195 et seq ante.

5 Ibid Sch 3 para 11(9)(a). As to the statutory maximum see PARA 367 note 6 ante.

6 Ibid Sch 3 para 11(9)(b)(ii).

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(viii) Civil Proceedings

421. Civil liability for breach of health and safety provisions.

The breach of a duty imposed by health and safety regulations under the Health and Safety at Work etc Act 1974¹ is, so far as it causes damage, actionable except in so far as the regulations provide otherwise².

1 le the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 32 (2009) PARA 303). As to the extension to railways of certain provisions relating to health and safety at work see PARA 194 et seq ante.

2 See *ibid* s 47 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 416. As to the liability of railway undertakers for accidents to employees and to non-employees see PARAS 424-425 post.

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422. Civil proceedings for contravention of duty imposed by infrastructure access and management provisions.

The obligation to comply with the following requirements, namely:

- 1174 (1) for management independence within the railway infrastructure¹;
- 1175 (2) for separation between infrastructure management and transport operations²;
- 1176 (3) for an infrastructure manager³ with responsibility for charging functions to be independent of any railway undertaking⁴;
- 1177 (4) for an infrastructure manager as mentioned in head (3) above to respect the confidentiality of information provided by applicants during the charging process⁵;
- 1178 (5) for an infrastructure manager with responsibility for allocating infrastructure capacity⁶ to be independent of any railway undertaking⁷;
- 1179 (6) for a contract to be concluded between the infrastructure manager as mentioned in head (5) above and any applicant⁸ to whom capacity is allocated before that capacity is used⁹;
- 1180 (7) for an infrastructure manager as mentioned in head (5) above to respect the confidentiality of information provided by applicants as part of the capacity allocation process¹⁰;
- 1181 (8) for any person to whom a direction is given, following an appeal to the regulatory body, to comply with and give effect to that direction¹¹,

is a duty owed to any person who may be affected by a breach of that duty and is actionable by any such person who sustains loss, damage or injury caused by the breach at the suit or instance of that person¹². In any proceedings brought against an infrastructure manager, international grouping¹³, railway undertaking, allocation body¹⁴, charging body¹⁵ or applicant pursuant to the duties described in heads (1) to (8) above, it is a defence to prove that it took all reasonable steps and exercised all due diligence to avoid the breach of duty¹⁶.

Without prejudice to the right which any person may have¹⁷ to bring civil proceedings in respect of any breach of duty, the obligation to comply is enforceable by civil proceedings by the Office of Rail Regulation¹⁸ for an injunction or any other relief¹⁹.

1 See the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 36(1)(a). The obligation referred to in the text is the obligation to comply with reg 8 (as to which see PARA 111 ante): see reg 36(1)(a). For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 7 (regs 33-40) see PARA 109 note 3 ante.

2 See *ibid* reg 36(1)(b). The obligation referred to in the text is the obligation to comply with reg 9 (as to which see PARA 111 ante): see reg 36(1)(b).

3 For the meaning of 'infrastructure manager' see PARA 109 note 7 ante.

4 See the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 36(1)(c). The obligation referred to in the text is the obligation to comply with reg 12(7) (as to which see PARA 114 ante): see reg 36(1)(c). For the meaning of 'railway undertaking' see PARA 109 note 1 ante.

5 See *ibid* reg 36(1)(c). The obligation referred to in the text is the obligation to comply with reg 12(12) (as to which see PARA 114 ante): see reg 36(1)(c).

6 For the meaning of 'allocation' see PARA 111 note 2 ante; and for the meaning of 'infrastructure capacity' see PARA 109 note 3 ante.

7 See the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 36(1)(d). The obligation referred to in the text is the obligation to comply with reg 16(3) (as to which see PARA 118 ante): see reg 36(1)(d).

8 For the meaning of 'applicant' see PARA 110 note 1 ante.

9 See the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 36(1)(d). The obligation referred to in the text is the obligation to comply with reg 16(10) (as to which see PARA 118 ante): see reg 36(1)(d).

10 See *ibid* reg 36(1)(d). The obligation referred to in the text is the obligation to comply with reg 16(11)(c) (as to which see PARA 118 ante): see reg 36(1)(d).

11 See *ibid* reg 36(1)(e). The obligation referred to in the text is the obligation to comply with reg 29(11) (as to which see PARA 61 ante): see reg 36(1)(e).

12 *Ibid* reg 36(1). As to liability for contraventions of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 431 post.

For the purpose of determining whether a breach of the duty imposed by reg 9 (see head (2) in the text) has occurred, it is immaterial that the relevant acts or omissions occurred outside the United Kingdom if, when they occurred, the person was:

269 (1) a United Kingdom national (reg 40(1)(a));

270 (2) a body incorporated under the law of any part of the United Kingdom (reg 40(1)(b)); or

271 (3) a person (other than a United Kingdom national or such a body) maintaining a place of business in the United Kingdom (reg 40(1)(c)).

For these purposes, 'United Kingdom national' means an individual who is:

272 (a) a British citizen, a British Dependent Territories citizen, a British national (overseas) or a British overseas citizen (reg 40(2)(a));

273 (b) a person who under the British Nationality Act 1981 is a British subject (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 9, 66-71) (Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 40(2)(b)); or

274 (c) a British protected person within the meaning of the British Nationality Act 1981 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 10, 72-76) (Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 40(2)(c)).

For the meaning of 'United Kingdom' see PARA 31 note 2 ante. As to British citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 8, 23-43; as to British overseas territories citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 8, 44-57; and as to British overseas citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 8, 58-62.

13 For the meaning of 'international grouping' see PARA 109 note 1 ante.

14 For the meaning of 'allocation body' see PARA 109 note 7 ante.

15 For the meaning of 'charging body' see PARA 109 note 7 ante.

16 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 36(2).

17 *Ie* by virtue of *ibid* reg 36(1) (as to which see the text and notes 1-12 *supra*): see reg 36(3).

18 For the meaning of 'Office of Rail Regulation' see PARA 109 note 8 ante.

19 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 36(3).

UPDATE

422 Civil proceedings for contravention of duty imposed by infrastructure access and management provisions

NOTES 1-12--SI 2005/3049 reg 36(1)(d) amended, reg 36(1)(f) added: SI 2009/1122.

TEXT AND NOTES 13-16--SI 2005/3049 reg 36(2) amended: SI 2009/1122.

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423. Summary recovery of damages and penalties under the Railways Clauses Consolidation Act 1845.

The Railways Clauses Consolidation Act 1845 contains certain provisions which¹ govern the summary recovery of damages and penalties provided for under the Act or the special Act². In all cases where, by the Railways Clauses Consolidation Act 1845, or the special Act, or by any Act incorporated with it, any damages, costs or expenses are directed to be paid and the method of ascertaining the amount is not provided for, in case of dispute the amount must be determined by two justices³.

Whenever any question of compensation, expenses, charges, damages or other matter is referred under the Railways Clauses Consolidation Act 1845 or the special Act to the determination of one or more justices, any justice, on the application of either party, may issue a summons requiring the other party to appear before a justice at a named time and place⁴. On the appearance of the parties or, in the absence of any party, on proof of service of the summons⁵, one or two justices (as the case may be) may hear and determine the question⁶. The costs of the proceedings are in the discretion of the justice or justices⁷.

Every penalty or forfeiture imposed by the Railways Clauses Consolidation Act 1845 or the special Act, the recovery of which is not otherwise provided for, may be recovered by summary proceedings before two justices⁸. Such penalty or forfeiture may be recovered only in a magistrates' court⁹.

A penalty imposed by a byelaw¹⁰ need not be a specific sum but no proceedings may be taken to recover such a penalty unless a specific sum is demanded before the proceedings are commenced¹¹.

The summary procedure for recovering penalties under the Railways Clauses Consolidation Act 1845 also applies to penalties imposed by the Regulation of Railways Act 1868¹².

1 Ie unless they are expressly varied or excepted by the special Act: see the Railways Clauses Consolidation Act 1845 s 1; and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

2 See *ibid* s 140 (as amended) (see the text and note 3 *infra*), s 142 (see the text and notes 4-7 *infra*), s 144 (as amended) (see PARA 393 ante), s 145 (as amended) (see the text and note 8 *infra*).

3 *Ibid* s 140 (amended by the Statute Law (Repeals) Act 1993). See also *Swansea Corpn v Harpur* [1912] 3 KB 493, CA; *affd sub nom Harpur v Swansea Corpn* [1913] AC 597, HL.

4 Railways Clauses Consolidation Act 1845 s 142.

5 As to proof of service of a summons issued by a justice see MAGISTRATES vol 29(2) (Reissue) PARA 691.

6 Railways Clauses Consolidation Act 1845 s 142. The justices may examine the parties and their witnesses on oath: s 142.

7 *Ibid* s 142.

8 *Ibid* s 145 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law Revision Act 1892; and the Transport Act 1962 s 95(1), (2), Sch 12 Pt II). A penalty may not be recovered as a civil debt: *R v Paget* (1881) 8 QBD 151, DC.

9 *London and Brighton Rly Co v Watson* (1879) 4 CPD 118, CA. However, where a special ticket is issued with a condition that, if used for any station other than that specified, it is to be forfeited and the full fare paid, an action to recover the full fare is not one to recover a forfeiture or penalty: *Great Northern Rly Co v Winder* [1892] 2 QB 595, DC.

10 As to byelaws see PARA 18 ante.

11 *Brown v Great Eastern Rly Co* (1877) 2 QBD 406, DC.

12 Regulation of Railways Act 1868 s 40. This Act includes penalties for trespassing on railways: see s 23 (as amended); and PARA 410 ante.

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(ix) Liability

424. Liability of railway undertakers for accidents to employees.

A railway undertaker¹ is under the same duty as other employers to take reasonable care for the safety of its employees² and, in particular, to employ fit and competent fellow employees, to provide proper and suitable plant and appliances³, to provide and maintain a safe system of working⁴ and to provide and maintain a safe place of work and safe access to it⁵.

Apart from liability at common law, a railway undertaker may also be liable to an employee in a civil action for breach of statutory duty, if the enactment in question was intended to impose a duty enforceable by a person aggrieved by its contravention⁶ and the injury suffered by the employee was caused or materially contributed to by the breach⁷.

1 Ie, for these purposes, any undertaker operating a railway under statutory authority.

2 As to the application of the health and safety at work legislation to railway undertakers see PARAS 26, 194 ante. As to an employer's common law duty of care generally see EMPLOYMENT vol 39 (2009) PARA 32 et seq.

The duty referred to in the text is a 'relevant duty of care' for the purposes of the Corporate Manslaughter and Corporate Homicide Act 2007: see CRIMINAL LAW, EVIDENCE AND PROCEDURE.

3 See EMPLOYMENT vol 39 (2009) PARA 33 et seq.

4 See eg *Hawes v Railway Executive* (1952) 96 Sol Jo 852, where it was held that a railway employer was not negligent in failing to cut off the current from an electric line undergoing minor repair; *Barnes v Port of London Authority* [1957] 1 Lloyd's Rep 486; *Trotman v British Railways Board* [1975] ICR 95.

5 See eg *Bath v British Transport Commission* [1954] 2 All ER 542, [1954] 1 WLR 1013, CA (liability for failure to provide guard rail); cf *Ashdown v Samuel Williams & Son Ltd* [1957] 1 QB 409, [1957] 1 All ER 35, CA (no liability where employee did not use safe means of access provided). See also *Trznadel v British Transport Commission* [1957] 3 All ER 196n, [1957] 1 WLR 1002, CA; *Trotman v British Railways Board* [1975] ICR 95.

6 For a case where an employer was held not to be liable for a breach of factory regulations, because the duty imposed by the regulations was not owed to the claimant, see *Hartley v Mayoh & Co* [1954] 1 QB 383, [1954] 1 All ER 375, CA. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

7 See eg *Hicks v British Transport Commission* [1958] 2 All ER 39, [1958] 1 WLR 493, CA; *Cade v British Transport Commission* [1959] AC 256, [1958] 2 All ER 615, HL; *Keaney v British Railways Board* [1968] 2 All ER 532, [1968] 1 WLR 879, CA. In each of these cases the defendant was held not to have been in breach of its statutory duty.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/425. Liability of railway undertakers to persons who are not employees.

425. Liability of railway undertakers to persons who are not employees.

Except in respect of persons with whom it has a contractual relationship¹, a railway undertaker² is under the same common duty of care under the Occupiers' Liability Act 1957 as other occupiers³ of premises, namely the duty to take such care as in all the circumstances of the case is reasonable to see that a visitor⁴ is reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there⁵. A railway undertaker, as an occupier, must be prepared for children to be less careful than adults⁶.

The duty of an engine driver to persons on or approaching the line must be distinguished from the duty of a driver of a vehicle on a public road: the engine driver is on private property and is required to look out for signals and drive to a timetable⁷.

The freedom of a railway undertaker to extend, restrict, modify or exclude its duty of care under the Occupiers' Liability Act 1957 by agreement or otherwise⁸ is subject to the restriction that liability for death or personal injury resulting from a breach of the common duty of care cannot be excluded or restricted by reference to any contract term or notice⁹. This restriction also applies to an undertaker's freedom to restrict its liability for negligence as a carrier of either goods or passengers¹⁰.

1 As a general principle, the allocation of various liabilities may form part of the contractual matrix that regulates relationships between persons within the railway industry. As to the liability of licensed operators to each other see the Claims allocation and handling agreement (CAHA/04/01: 01-04-04), an industry wide agreement to which all such operators are required to become party by the terms of the licences granted to them (as to which see PARA 83 et seq ante). As to commercial liability for losses which have been caused by defective or unsafe railway assets, but which are not actionable under health and safety legislation (as to which see PARA 421 ante), see eg *HSBC Rail (UK) Ltd v Network Rail Infrastructure Ltd (formerly Railtrack plc)* [2005] EWCA Civ 1437, [2006] 1 All ER 343, [2006] 1 WLR 643 (damage to rolling stock following derailment); and *Midland Mainline Ltd v Eagle Star Insurance Co Ltd* [2004] EWCA Civ 1042, [2004] 2 Lloyd's Rep 604 (business interruption losses following timetable disruption caused by emergency speed restrictions).

2 Ie, for these purposes, any undertaker operating a railway under statutory authority.

3 As to the meaning of 'occupier' see NEGLIGENCE vol 78 (2010) PARA 30.

4 As to the meaning of 'visitor' see NEGLIGENCE vol 78 (2010) PARA 31.

The common law rules as to the liability of occupiers for injury suffered by persons other than visitors have been replaced by the provisions of the Occupiers' Liability Act 1984 also: see NEGLIGENCE vol 78 (2010) PARA 40; and as to the common law duty see *British Railways Board v Herrington* [1972] AC 877, [1972] 1 All ER 749, HL.

5 See the Occupiers' Liability Act 1957 s 2(2); and NEGLIGENCE vol 78 (2010) PARA 32. The provisions of the Occupiers' Liability Act 1957 replace the corresponding common law rules (see s 1(1)), but for examples of relevant decisions at common law see *Pym v Great Northern Ry Co* (1861) 2 F & F 619; *Great Western Ry Co of Canada v Fawcett* (1863) 8 LT 31, PC; *Bloomstein v Railway Executive* [1952] 2 All ER 418; *Blackman v Railway Executive* [1953] 2 All ER 323n, [1954] 1 WLR 220, CA; *Hare v British Transport Commission* [1956] 1 All ER 578, [1956] 1 WLR 250; *Slater v Clay Cross Co Ltd* [1956] 2 QB 264, [1956] 2 All ER 625, CA.

The duty referred to in the text is a 'relevant duty of care' for the purposes of the Corporate Manslaughter and Corporate Homicide Act 2007: see CRIMINAL LAW, EVIDENCE AND PROCEDURE. As to a case which preceded the enactment of this legislation see eg *Thames Trains Ltd v Health and Safety Executive* [2003] EWCA Civ 720, 147 Sol Jo LB 661, [2003] All ER (D) 310 (May) (whether victims of a disastrous accident were owed statutory duties or duties at common law by the defendant).

6 See the Occupiers' Liability Act 1957 s 2(3)(a); and NEGLIGENCE vol 78 (2010) PARA 32. As to the standard of care generally see NEGLIGENCE vol 78 (2010) PARA 33.

7 For cases on this point decided at common law see *Lloyds Bank Ltd v British Transport Commission* [1956] 3 All ER 291 at 294-295, [1956] 1 WLR 1279 at 1283-1284, CA, per Denning LJ, and at 298 and 1288 per Morris LJ; *Trznadel v British Transport Commission* [1957] 3 All ER 196n at 198, [1957] 1 WLR 1002 at 1006, CA, per Morris LJ. See also *Hazell v British Transport Commission* [1958] 1 All ER 116, [1958] 1 WLR 169.

8 lie under the Occupiers' Liability Act 1957 s 2(1): see NEGLIGENCE vol 78 (2010) PARA 38.

9 See the Unfair Contract Terms Act 1977 ss 1(1)(c), 2; and NEGLIGENCE vol 78 (2010) PARA 74.

10 See *ibid* ss 1(1)(a), (b), 2; and NEGLIGENCE vol 78 (2010) PARA 74. As to contracts of carriage see CARRIAGE AND CARRIERS vol 7 (2008) PARA 71 et seq.

UPDATE

425 Liability of railway undertakers to persons who are not employees

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/426. Statutory liability of owners of engines and carriages for trespass or damage.

426. Statutory liability of owners of engines and carriages for trespass or damage.

The owners of engines and carriages used on a railway¹ are answerable for any trespass or damage done by their engines or carriages, or by any of their servants or persons employed by them, in respect of the railway and its works or machinery or any other person's property². Any such servant or employee may be convicted of such trespass or damage before two justices of the peace³, and on such a conviction the owner of the engine or carriage concerned is liable to the undertaker or other injured person in damages not exceeding £50⁴.

1 For the meaning of 'railway' see PARA 326 note 1 ante. As to railway undertakers see PARA 326 note 1 ante.

2 See the Railways Clauses Consolidation Act 1845 s 124.

Provisions under the Railways Clauses Consolidation Act 1845 may be expressly varied or excepted by the special Act: see s 1 (as amended); and PARA 291 ante. For the meaning of 'special Act' see PARA 291 note 2 ante.

3 See *ibid* s 124. A conviction may be on confession or the sworn evidence of a credible witness: see s 124. See note 2 *supra*.

4 See *ibid* s 124. The amount of damages is determined by the justices: see s 124. See note 2 *supra*.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/427. Statutory authority as a defence to actions in nuisance.

427. Statutory authority as a defence to actions in nuisance.

Any person¹:

- 1182 (1) has authority: (a) to use, or to cause or permit any agent or independent contractor of his to use, rolling stock² on any track³; or (b) to use, or to cause or permit any agent or independent contractor of his to use, any land comprised in a network⁴, station⁵ or light maintenance depot⁶ for or in connection with the provision of network services⁷, station services⁸ or light maintenance services⁹; and
- 1183 (2) who is the owner or occupier of any land has authority to authorise, consent¹⁰ to or acquiesce¹¹ in: (a) the use by another of rolling stock on any track comprised in that land¹²; or (b) the use by another of that land for or in connection with the provision of network services, station services or light maintenance services¹³,

if and so long as the following qualifying conditions are satisfied in the particular case¹⁴.

The 'qualifying conditions' are:

- 1184 (i) in relation to any use of rolling stock on track: (A) that the track is comprised in a network, station or light maintenance depot¹⁵; and (B) that the operator¹⁶ of that network, station or light maintenance depot is the holder of an appropriate licence¹⁷ or has the benefit of an appropriate licence exemption¹⁸; and
- 1185 (ii) in relation to any use of land for or in connection with the provision of network services, station services or light maintenance services, that the operator of the network, station or light maintenance depot in question is the holder of an appropriate licence or has the benefit of an appropriate licence exemption¹⁹.

The authority so conferred²⁰ is conferred only for the purpose of providing a defence of statutory authority in England and Wales²¹ in any proceedings, whether civil or criminal, in nuisance; or in any civil proceedings, other than proceedings for breach of statutory duty, in respect of the escape of things from land²².

1 le subject to the Railways Act 1993 s 122(2)-(7) (see the text and notes 2-22 infra); see s 122(1).

Section 122 binds the Crown: see s 150(1)(h).

2 For the meaning of 'rolling stock' see PARA 82 note 2 ante; definition applied by ibid s 122(7).

3 Ibid s 122(1)(a)(i).

For the purposes of s 122: (1) any reference to the use of rolling stock on track includes a reference to the carriage of any passengers or other persons, or any goods, of any class or description for any purpose on or by means of that rolling stock on that track (s 122(6)(a)); and (2) rolling stock is regarded as 'used' on any track at any time when it is present on that track, irrespective of whether the rolling stock is comprised in a train or not, whether the rolling stock is moving or stationary and, if moving, irrespective of the means by which the motion is caused (s 122(6)(b)). For the purposes of the Railways Act 1993, any class or description may be framed by reference to any matters or circumstances whatever: s 151(5). For the meaning of 'track' see PARA 82 note 8 ante; definition applied by s 122(7). For the meaning of 'train' see PARA 82 note 2 ante; definition applied by s 122(7).

- 4 For the meaning of 'network' see PARA 82 note 8 ante; definition applied by ibid s 122(7).
- 5 For the meaning of 'station' see PARA 82 note 5 ante; definition applied by ibid s 122(7).
- 6 For the meaning of 'light maintenance depot' see PARA 83 note 7 ante; definition applied by ibid s 122(7).
- 7 For the meaning of 'network services' see PARA 82 ante; definition applied by ibid s 122(7).
- 8 For the meaning of 'station services' see PARA 82 note 5 ante; definition applied by ibid s 122(7).
- 9 Ibid s 122(1)(a)(ii). For the meaning of 'light maintenance services' see PARA 82 note 4 ante; definition applied by s 122(7).
- 10 Any consent under or by virtue of the Railways Act 1993 must be given in writing: s 151(4).
- 11 The owner or occupier of any land is to be regarded for the purposes of ibid s 122 as 'acquiescing' in: (1) any use by another of rolling stock on track comprised in that land (s 122(5)(a)); or (2) any use of that land by another for or in connection with the provision of network services, station services or light maintenance services, notwithstanding that it is not within his power to put an end to that use by that other (s 122(5)(b)).
- 12 Ibid s 122(1)(b)(i).
- 13 Ibid s 122(1)(b)(ii).
- 14 Ibid s 122(1).
- 15 Ibid s 122(2)(a)(i).
- 16 For the meaning of 'operator' see PARA 83 note 7 ante; definition applied by ibid s 122(7).
- 17 For these purposes, 'appropriate licence', in relation to the operator of a network, station or light maintenance depot, means a licence which authorises him to be the operator of that network, station or light maintenance depot: ibid s 122(7). For the meaning of 'licence' see PARA 83 note 6 ante; definition applied by s 122(7).
- 18 Ibid s 122(2)(a)(ii). For these purposes, 'appropriate licence exemption', in relation to the operator of a network, station or light maintenance depot, means any such licence exemption as exempts him from the requirement to hold the licence that would otherwise be the appropriate licence in his case: s 122(7). For the meaning of 'licence exemption' see PARA 92 note 9 ante; definition applied by s 122(7).
- 19 Ibid s 122(2)(b).
- 20 Is conferred by ibid s 122: see s 122(3).
- 21 For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante.
- 22 Railways Act 1993 s 122(3)(a). Nothing in s 122 is to be construed as excluding a defence of statutory authority otherwise available under or by virtue of any enactment: s 122(4).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/428. Liability of bodies corporate for offences under the Railways Act 1993.

428. Liability of bodies corporate for offences under the Railways Act 1993.

Where a body corporate¹ is guilty of an offence under the Railways Act 1993 and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly².

1 For the meaning of 'body corporate' see PARA 7 note 4 ante.

2 Railways Act 1993 s 147(1). Where the affairs of a body corporate are managed by its members, s 147(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 147(2). As to the meaning of 'functions' see PARA 7 note 12 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/429. Liability of bodies corporate for offences relating to the licensing of railway undertakings.

429. Liability of bodies corporate for offences relating to the licensing of railway undertakings.

Where an offence under the provisions governing the licensing of railway undertakings¹ has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly². Where the affairs of a body corporate are managed by its members, this provision as to liability³ applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate⁴.

1 I.e. the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 (as to which see PARA 93 et seq ante): see reg 16(1). For the meaning of 'railway undertaking' see PARA 93 note 1 ante. As to the offence of making false statements in giving any information or making any application under or for the purposes of those regulations see PARA 417 ante; as to the offence of contravening the prohibition on the unlicensed provision of services see PARA 368 ante; and as to the offence of contravening the prohibition on providing train services without holding a Statement of National Regulatory Provisions (SNRP) see PARA 369 ante.

As to the application and scope of the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050 see PARA 93 note 1 ante.

2 Ibid reg 16(1).

3 I.e. ibid reg 16(1) (see the text and notes 1-2 supra): see reg 16(2).

4 Ibid reg 16(2).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/430. Liability for offences relating to interoperability provisions.

430. Liability for offences relating to interoperability provisions.

Where the commission by any person of an offence under the provisions which govern the interoperability of the United Kingdom parts of the trans-European rail system¹ is due to the act or default of some other person in the course of any business of his, the other person is guilty of the offence and may be proceeded against and punished² whether or not proceedings are taken against the first-mentioned person³.

Where a body corporate is guilty of such an offence⁴, in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly⁵. Where the affairs of a body corporate are managed by its members, this extension of liability⁶ applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate⁷.

In any proceedings against any person for an offence under the interoperability provisions, it is a defence⁸ for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence⁹. However, where, in any proceedings against any person for such an offence, a defence of due diligence¹⁰ involves an allegation that the commission of the offence was due to either the act or default of another¹¹ or reliance on information given by another¹², that person must not, without the permission of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the commencement of the hearing of the proceedings, he has served a notice on the person bringing the proceedings¹³. Such a notice must give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it¹⁴.

1 I.e. the Railways (Interoperability) Regulations 2006, SI 2006/397 (as amended) (as to which see PARA 210 et seq ante): see reg 39(1).

As to the application and scope of the provisions of the Railways (Interoperability) Regulations 2006, SI 2006/397 (as amended) see PARA 210 note 5 ante.

2 I.e. by virtue of *ibid* reg 39(1): see reg 39(1).

3 *Ibid* reg 39(1).

4 I.e. under the Railways (Interoperability) Regulations 2006, SI 2006/397 (as amended), including where it is so guilty by virtue of reg 39(1) (as to which see the text and notes 1-3 supra): see reg 39(2).

5 *Ibid* reg 39(2).

6 I.e. *ibid* reg 39(2) (see the text and notes 4-5 supra): see reg 39(3).

7 *Ibid* reg 39(3).

8 I.e. subject to *ibid* reg 38(2)-(4) (see the text and notes 10-14 infra): see reg 38(1).

9 *Ibid* reg 38(1).

10 I.e. the defence provided in *ibid* reg 38(1) (see the text and notes 8-9 supra): see reg 38(2).

11 Ibid reg 38(2)(a).

12 Ibid reg 38(2)(b). A person is not entitled to rely on the defence provided by reg 38(1) (see the text and notes 8-9 supra) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular, to: (1) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information (reg 38(4)(a)); and (2) whether he had any reason to disbelieve the information (reg 38(4)(b)).

13 Ibid reg 38(2).

14 Ibid reg 38(3).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/431. Liability for contraventions relating to infrastructure access and management.

431. Liability for contraventions relating to infrastructure access and management.

In the event of a contravention of, or a refusal or failure to comply with, a requirement or prohibition imposed on an international grouping¹ by the provisions which govern access to and the management of the railway infrastructure²:

- 1186 (1) where the contravention, or refusal or failure to comply, would be an offence under those provisions³, each railway undertaking⁴ comprised in the grouping is guilty of the offence and liable to be proceeded against and punished accordingly unless that undertaking proves that the contravention, refusal or failure occurred without the consent or connivance of that undertaking and that the undertaking exercised all due diligence to prevent that contravention, refusal or failure⁵; and
- 1187 (2) where a civil remedy would be available to any person in respect of any loss, damage or injury caused by the contravention, or refusal or failure to comply⁶, each railway undertaking comprised in the grouping is jointly and severally liable in respect of such loss, damage or injury⁷.

Where an offence under the infrastructure access and management provisions⁸ has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly⁹. Where the affairs of a body corporate are managed by its members, this provision as to liability¹⁰ applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate¹¹.

1 For the meaning of 'international grouping' see PARA 109 note 1 ante.

2 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 35. The provisions referred to in the text are the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 (see PARA 109 et seq ante). For the meaning of 'railway infrastructure' see PARA 109 note 3 ante.

As to the application and scope of the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, Pt 7 (regs 33-40) see PARA 109 note 3 ante.

3 Ie under the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049. As to the offence of making false statements in giving any information or making any application under or for the purposes of those regulations see PARA 418 ante.

4 For the meaning of 'railway undertaking' see PARA 109 note 1 ante.

5 Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049, reg 35(a).

6 As to civil proceedings for the contravention of a duty imposed by the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 see PARA 422 ante.

7 Ibid reg 35(b).

8 Ie the Railways Infrastructure (Access and Management) Regulations 2005, SI 2005/3049 (see PARA 109 et seq ante).

9 Ibid reg 38(1).

10 Ie ibid reg 38(1) (see the text and notes 8-9 supra): see reg 38(2).

11 Ibid reg 38(2).

UPDATE

431 Liability for contraventions relating to infrastructure access and management

TEXT AND NOTES 1-7--SI 2005/3049 reg 35 repealed: SI 2009/1122.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/2. RAILWAYS/(6) OFFENCES AND CIVIL PROCEEDINGS/(ix) Liability/432. Liability for contraventions of safety verification requirements.

432. Liability for contraventions of safety verification requirements.

In any proceedings against any person for an offence regarding a failure to undertake established safety verification procedures before new or altered vehicles and infrastructure are introduced¹, it is a defence² for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence³. However, where, in any proceedings against any person for such an offence, a defence of due diligence⁴ involves an allegation that the commission of the offence was due to either the act or default of another⁵ or reliance on information given by another⁶, that person must not, without the permission of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the commencement of the hearing of the proceedings, he has served a notice on the person bringing the proceedings⁷. Such a notice must give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it⁸.

However, a failure to discharge a duty placed on the Office of Rail Regulation⁹ by the Railways and Other Guided Transport Systems (Safety) Regulations 2006¹⁰ is not to be regarded as a contravention of health and safety regulations (or of any requirement or prohibition imposed under any such regulations)¹¹.

1 Ie under the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 5(4) (see PARA 236 ante) and reg 6(4) (see PARA 236 ante): see reg 31(1). For the meaning of 'infrastructure' see PARA 231 ante; and for the meaning of 'new' for these purposes see PARAS 232 note 16, 233 note 21 ante. As to the meaning of 'vehicle' see PARA 231 note 2 ante.

2 Ie subject to *ibid* reg 31(2)-(4) (see the text and notes 4-8 *infra*): see reg 31(2).

3 *Ibid* reg 31(1).

4 Ie the defence provided in *ibid* reg 31(1) (see the text and notes 1-3 *supra*): see reg 31(2).

5 *Ibid* reg 31(2)(a).

6 *Ibid* reg 31(2)(b). A person is not entitled to rely on the defence provided by reg 31(1) (see the text and notes 1-3 *supra*) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular, to: (1) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information (reg 31(4)(a)); and (2) whether he had any reason to disbelieve the information (reg 31(4)(b)).

7 *Ibid* reg 31(2).

8 *Ibid* reg 31(3).

9 As to the Office of Rail Regulation see PARA 49 *et seq* ante.

10 Ie by the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (as to which see PARA 231 *et seq* ante): see reg 28.

11 *Ibid* reg 28. The text refers to contraventions for the purposes of an offence under the Health and Safety at Work etc Act 1974 s 33(1)(c) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 852): see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 28.

UPDATE

432 Liability for contraventions of safety verification requirements

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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433. Liability for contravention of miscellaneous railway safety provisions.

In any proceedings for an offence for a contravention of any of the provisions of the Railway Safety (Miscellaneous Provisions) Regulations 1997¹ it is a defence for the person charged to prove:

- 1188 (1) that the contravention was due to the act or default of another person not being one of his employees (the 'other person')²; and
- 1189 (2) that he took all reasonable precautions and exercised all due diligence to avoid the contravention³.

Where a contravention of any of the provisions of the Railway Safety (Miscellaneous Provisions) Regulations 1997⁴ by any person is due to the act or default of some other person, that other person is guilty of the offence which would, but for any defence⁵ available to the first-mentioned person, be constituted by the act or default⁶.

¹ I.e. the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended): see PARAS 267-272 ante. As to the authority for making these regulations see PARA 194 ante.

² Ibid reg 9(1)(a).

³ Ibid reg 9(1)(b). However, the person charged is not entitled, without the permission of the court, to rely on this defence unless, within a period ending seven clear days before the hearing to determine mode of trial he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession: reg 9(2).

⁴ I.e. any of the provisions of the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended): see reg 9(3).

⁵ I.e. any defence under ibid reg 9: see reg 9(3).

⁶ Ibid reg 9(3).

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434. Common carriers.

No person is to be regarded as a common carrier¹ by railway².

1 As to common carriers see CARRIAGE AND CARRIERS vol 7 (2008) PARAS 1, 3 et seq.

2 Railways Act 1993 s 123.

The Post Office Act 1953 ss 33-42 (repealed) (which made provision for and in connection with the power of the Post Office to compel railway undertakers to convey mail-bags on their trains) no longer has effect: see the Railways Act 1993 s 124. As to postal services see POST OFFICE.

UPDATE

435-553 Inland Waterways

Material relating to this part has been revised and published under the title WATER AND WATERWAYS vols 100, 101 (2009).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/NUE 3. INLAND WATERWAYS

NUE 3. INLAND WATERWAYS

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(i) Legislative Scheme/554. The statutory framework.

4. CROSS-COUNTRY PIPELINES

(1) INTRODUCTION

(i) Legislative Scheme

554. The statutory framework.

This title sets out the Pipe-lines Act 1962 which controls in the public interest the construction of cross-country¹ and local pipelines² and takes the place of the private Bill procedure that was formerly used for such purposes³. The law relating to other types of pipeline, including submarine pipelines and pipelines used for the conveyance of utilities, is dealt with elsewhere⁴.

This title also sets out the law that regulates, in the interests of safety, the construction, operation and maintenance of pipelines which was formerly dealt with in the Pipe-lines Act 1962 but is now dealt with by way of regulations⁵. Matters relating to the safety of pipelines⁶ and to accidents involving pipelines⁷ are the province of inspectors⁸ appointed⁹ by the Health and Safety Executive¹⁰.

A number of European Directives concerned with the environment have an overriding impact on the development of land generally, including for the purposes of the Pipe-lines Act 1962¹¹.

1 For the meaning of 'cross-country pipeline' see PARA 559 post. Cross-country pipelines (as so defined) require authorisation from the Secretary of State by means of a pipeline construction authorisation which carries with it deemed planning permission: see PARA 573 et seq post.

2 For the meaning of 'local pipeline' see PARA 559 post. Local pipelines require local authority planning permission under the normal planning system (see generally TOWN AND COUNTRY PLANNING) and are not governed by the Pipe-lines Act 1962 to the extent they were, when notification to the Secretary of State was required at least 16 weeks prior to construction: see s 2 (repealed).

3 Formerly, a private Bill would have been promoted for each works project in order to authorise the construction works and to provide for associated matters eg the compulsory acquisition of land (where this would have been required). As to the private Bill procedure see PARLIAMENT vol 34 (Reissue) PARA 845 et seq. Because the Acts that resulted were not public general Acts, they are outside the scope of this work.

The process is now subject to ministerial authorisation: see PARA 555 et seq post. Under the Deregulation and Contracting Out Act 1994, a minister had power to make orders to amend or to repeal any Act of Parliament passed before the end of the 1993-94 parliamentary session in order to remove or reduce a statutory burden on a trade, business, profession or individual, provided that the minister was satisfied that the amendment or repeal would not remove any necessary protection: see s 1 (largely repealed) (see now the Legislative and Regulatory Reform Act 2006); and see PARLIAMENT vol 34 (Reissue) PARA 947; PARLIAMENT vol 78 (2010) PARA 808. Under these powers, the Deregulation (Pipe-lines) Order 1999, SI 1999/742 was made, which applied deregulation measures to the Pipe-lines Act 1962: see s 2 (repealed) (see note 2 supra), s 3 (pipeline diversion authorisations) (repealed) (see now para 555 post), s 7 (repealed), ss 9-10 (amended) (see PARA 585 et seq post), s 58 (amended) (see PARA 560 post) and Sch 1 (amended) (see PARA 573 et seq post).

4 The Pipe-lines Act 1962 covers all onshore pipelines in Great Britain except those of gas transporters, the water companies, HM government and some other minor classes of pipe which are excluded from the scope of the Act (as to which see PARAS 560-566 post). See further FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 841 et seq (gas: works, pipelines and rights over land); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1281 et seq (electricity: works and rights over land). The law relating to the construction and use of submarine pipelines for which authorisation from the Secretary of State is required is dealt with under the Petroleum Act 1998 Pt III (ss 14-28) (as amended): see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1740 et seq.

5 The safety interests referred to in the text are now governed by the Pipelines Safety Regulations 1996, SI 1996/825 (as amended) (see PARA 609 et seq post), which are health and safety regulations made under the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303). As to the application of health and safety provisions see PARA 610 et seq post.

6 See PARA 609 et seq post.

7 As to the notification of accidents involving pipelines see the Pipe-lines Act 1962 s 37 (as amended); and PARA 617 post.

8 References to an inspector in any provision of an enactment, instrument or other document relating to the functions under a provision of the Pipe-lines Act 1962 mentioned in the Health and Safety at Work etc Act 1974 Sch 1 (as amended) of an inspector appointed under the Pipe-lines Act 1962 must be construed, except where the context otherwise requires, or where the reference is otherwise expressly amended, as references to an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375): Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 3. As to the Health and Safety Executive generally see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

9 As to the mode of appointment of inspectors see the Health and Safety at Work etc Act 1974 s 19(2); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

10 Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 3. Inspectors thus appointed have extensive powers: see the Health and Safety at Work etc Act 1974 s 20; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

11 See generally TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 10 et seq; and as to pipelines in particular see PARA 492 et seq.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(i) Legislative Scheme/555. The Secretary of State and Welsh Ministers.

555. The Secretary of State and Welsh Ministers.

The Minister of Power¹ is named in the Pipe-lines Act 1962 as the person responsible for dealing with the matters therein but energy policy now forms part of the portfolio of the Secretary of State for Business, Enterprise and Regulatory Reform². In relation to pipelines³, the Secretary of State has power⁴, among other things: (1) to grant authorisations for pipeline construction or for a diversion to a pipeline⁵; (2) to secure the removal of certain works⁶; (3) to direct that specified local pipelines⁷ be treated as cross-country pipelines⁸; (4) to make compulsory purchase orders⁹ and compulsory rights orders¹⁰ and to attach conditions to compulsory rights orders¹¹; and (5) to make regulations and prescribe matters for the purposes of the Pipe-lines Act 1962¹². It is the responsibility of the Secretary of State also to ensure that the construction of superfluous pipelines is avoided¹³.

Many statutory functions vested in a Secretary of State or a Minister of the Crown are transferred so as to be exercisable in relation to Wales by the Welsh Ministers¹⁴. However, for the purposes of this title, only the power to place a pipeline in a street¹⁵ has been so transferred¹⁶.

1 See the Pipe-lines Act 1962 s 66(1) (definition of 'minister').

2 The functions of the Minister of Power were transferred to the Minister of Technology (see the Minister of Technology Order 1969, SI 1969/1498; Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(2)) and then to the Secretary of State for Trade and Industry (see art 2(2)). In 1974, certain functions of the Secretary of State for Trade and Industry were transferred to the Secretary of State for Energy (see the Secretary of State (New Departments) Order 1974, SI 1974/692) and back again (see the Transfer of Functions (Energy) Order 1992, SI 1992/1314). In this title, unless the context otherwise requires, the Secretary of State referred to is generally to be taken to be the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry): see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 601. However, at the date at which this title states the law, certain functions relating to planning and environmental issues were shared between the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Communities and Local Government; and health and safety matters in the workplace were the responsibility of the Secretary of State for Work and Pensions. For current ministerial responsibilities see the websites of the government departments concerned and the Civil Service Yearbook. In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

To be defrayed out of moneys provided by Parliament are: (1) any increase attributable to the Pipe-lines Act 1962 in the expenses of the Secretary of State which, by virtue of the Ministry of Fuel and Power Act 1945 s 3(3) (repealed), are defrayed out of such moneys (Pipe-lines Act 1962 s 68(1)(a)); and (2) any increase attributable to the Pipe-lines Act 1962 in the sums payable out of moneys so provided by way of Rate Deficiency Grant or Exchequer Equalisation Grant under the enactments relating to local government in England and Wales or in Scotland (s 68(1)(b)). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. Any sums received under the Pipe-lines Act 1962 by a Minister of the Crown are to be paid into the Exchequer: s 68(2) (amended by the Post Office Act 1969 s 141, Sch 11 Pt II). The Local Government Act 1966 s 12 (repealed) provided that the Rate Deficiency Grant was not payable for the year 1967-68 and subsequent years and, accordingly, head (2) supra is of no current effect. At the date of the Pipe-lines Act 1962, the Exchequer Equalisation Grant was payable in Scotland only.

3 For the meaning of 'pipeline' see PARA 559 post.

4 Any power, exercisable by notice, conferred by the Pipe-lines Act 1962 on the Secretary of State to impose a prohibition or requirement includes power, similarly exercisable, to vary or revoke the prohibition or requirement: s 50. For these purposes, 'notice' means a notice in writing: s 66(1). The Secretary of State must

serve such notice eg in exercise of his power to remove unlawful works (see head (2) in the text) or to prohibit the use or testing of a pipeline unless the owners have sufficient funds to discharge liability (see PARA 618 post).

5 See *ibid* s 1, Sch 1 (as amended); and PARAS 573-578 post. As to requirements in respect of applications for authorisations for pipelines which are or have been used to convey oil or gas see the Electricity and Pipe-line Works (Assessment of Environmental Effects) Regulations 1990, SI 1990/442 (as amended); and PARA 567 post. As to requirements to consider the effect on a European site, in relation to the granting of a pipeline construction authorisation, see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 75-78; and PARAS 568-572 post.

6 See the Pipe-lines Act 1962 s 4 (as amended); and PARA 583 post.

7 For the meaning of 'local pipeline' see PARA 559 post.

8 See the Pipe-lines Act 1962 s 6 (as amended); and PARA 582 post. For the meaning of 'cross-country pipeline' see PARA 559 post.

9 See *ibid* s 11 (as amended); and PARA 595 post. For the meaning of 'compulsory purchase order' see PARA 595 post.

10 See *ibid* s 12 (as amended); and PARA 597 post. For the meaning of 'compulsory rights order' see PARA 597 post.

11 See *ibid* s 13 (as amended); and PARA 598 post.

12 See *ibid* s 53(1). The power is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 53(2). 'Prescribed' means prescribed by such regulations: s 66(1). In exercise of this power, the Pipe-lines (Notices) Regulations 1963, SI 1963/151 have been made (see PARA 595 et seq post).

13 See the Pipe-lines Act 1962 ss 9-10F (as amended); and PARA 585 et seq post.

14 These functions were previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1) or, in the case of functions conferred under enactments subsequent to the Government of Wales Act 1998, by virtue of particular provision made under those enactments: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Further transfers of ministerial functions to the Welsh Ministers may be effected by Order in Council pursuant to s 58, Sch 3 paras 1-8. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. In general, Acts that have come into force since the establishment of the National Assembly for Wales have made specific provision for the exercise of functions in relation to Wales.

15 See the Pipe-lines Act 1962 s 15 (as amended) (see PARA 590 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 401-404).

16 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended).

UPDATE

555 The Secretary of State and Welsh Ministers

NOTE 2--The Secretary of State for Business, Enterprise and Regulatory Reform has been redesignated as the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(i) Legislative Scheme/556. Determination of compensation questions under the Pipe-lines Act 1962.

556. Determination of compensation questions under the Pipe-lines Act 1962.

In default of agreement, any question with regard to a person's entitlement to compensation under the Pipe-lines Act 1962¹, or the amount of compensation to which a person is entitled under those provisions, is to be determined by the Lands Tribunal².

1 As to compensation in respect of a compulsory rights order see PARA 601 post. Special provisions apply to compensation in respect of ecclesiastical property: see the Pipe-lines Act 1962 s 51(3), (5) (as amended); and PARA 583 note 11 post. For the meaning of 'ecclesiastical property' for these purposes see PARA 557 note 10 post.

2 Ibid s 48. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

UPDATE

556 Determination of compensation questions under the Pipe-lines Act 1962

TEXT AND NOTE 2--Reference to the Lands Tribunal is now to the Upper Tribunal: Pipe-lines Act 1962 s 48 (amended by SI 2009/1307).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(i) Legislative Scheme/557. Service of documents under the Pipe-lines Act 1962.

557. Service of documents under the Pipe-lines Act 1962.

Any document required or authorised by the Pipe-lines Act 1962 to be given to or served on any person may be given or served by delivering it to him, by leaving it at his proper address, or by the recorded delivery service¹. Any such document required or authorised to be given to or served on any authority or body being a corporation is taken to be duly given or served if it is given to or served on the secretary or clerk of the authority or body². For these purposes³, the proper address of any person to or on whom any such document is to be given or served is, in the case of the secretary or clerk of a corporation, that of its registered or principal office and, in any other case, the last-known address of the person to be served⁴, except that, where the person to or on whom the document is to be given or served has (in accordance with arrangements agreed) furnished an address in the United Kingdom⁵ for the giving or service of the documents, his proper address is the address so furnished⁶.

If, after reasonable inquiry, the authority, body or person seeking to give or serve the document cannot ascertain the name or the address of any owner⁷, lessee or occupier of land⁸ to or on whom the document is to be given or served, it may be given or served by addressing it to the person by the description of 'owner', 'lessee' or 'occupier' of land (describing it) to which the document relates, and by delivering it to some responsible person resident, or appearing to be resident, on the premises, or, if there is no such person to whom it can be delivered, by fixing it or a copy of it to some conspicuous part of the premises⁹.

Where a document is required to be served on an owner of land, and the land is ecclesiastical property¹⁰, a copy of the document must be served on the Diocesan Board of Finance for the diocese in which the land is situated¹¹.

1 Pipe-lines Act 1962 s 49(1).

2 Ibid s 49(2).

3 For the purposes of ibid s 49 and of the Interpretation Act 1978 s 7 (references to the service of documents by post: see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Pipe-lines Act 1962 s 49: see s 49(3); Interpretation Act 1978 s 17(2).

4 Pipe-lines Act 1962 s 49(3).

5 For the meaning of 'United Kingdom' see PARA 29 note 3 ante.

6 See the Pipe-lines Act 1962 s 49(3) proviso.

7 For these purposes, 'owner' means (1) in relation to land, a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple, whether in possession or reversion, and includes a person entitled to the rents and profits under a lease or agreement the unexpired term of which exceeds three years; (2) in relation to a pipeline (for the meaning of which see PARA 559 post), the person in whom it is vested; (3) in relation to a structure, the person who, in relation to land being the site of the structure, is its owner by virtue of head (1) or head (2) supra: ibid s 66(1).

8 For these purposes, 'land' includes land covered by water: ibid s 66(1).

9 Ibid s 49(4).

10 For these purposes, 'ecclesiastical property' means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of a diocesan bishop or the site of a church so subject, or being or forming part of a burial ground so subject: ibid s 51(6).

11 Ibid s 51(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 9(a)). Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant, it is treated for the purposes of an application for a compulsory purchase or rights order in which the property is proposed to be comprised, and of a compulsory purchase of the property in pursuance of a compulsory purchase order, as being vested in the Diocesan Board of Finance for the diocese in which the land is situated, and (in the case of a compulsory purchase) any notice to treat is served accordingly: Pipe-lines Act 1962 s 51(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 9(a), (b)). For the meaning of 'compulsory purchase order' see PARA 595 post; and for the meaning of 'compulsory rights order' see PARA 597 post. As to diocesan boards of finance see ECCLESIASTICAL LAW vol 14 paras 517-518; and as to the incumbent of a benefice see ECCLESIASTICAL LAW vol 14 para 541.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(i) Legislative Scheme/558. The movement of goods by pipeline.

558. The movement of goods by pipeline.

The movement of goods by pipeline¹ is controlled by the Customs and Excise Acts 1979².

Accordingly, where any thing conveyed by a pipeline is chargeable with a customs or excise duty which has not been paid, an officer³ may enter any land adjacent to the pipeline in order to get to the pipeline for the purpose of exercising in relation to that thing any power conferred by or under the Customs and Excise Acts 1979 or to get from the pipeline after the exercise of any such power⁴.

¹ For the meaning of 'pipeline' see PARA 559 post; definition applied by the Customs and Excise Management Act 1979 s 1(1). For the meaning of 'goods' for these purposes see CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 413.

² Ie the Customs and Excise Duties (General Reliefs) Act 1979; the Alcoholic Liquor Duties Act 1979; the Hydrocarbon Oil Duties Act 1979; the Matches and Mechanical Lighters Duties Act 1979 (repealed); the Tobacco Products Duty Act 1979; and the Customs and Excise Management Act 1979: see s 1(1); and CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 413. As to the application of customs and excise provisions to pipelines see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 898.

³ Ie a person commissioned by the Commissioners for Revenue and Customs: see ibid s 1(1); and CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 413. As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

⁴ See ibid s 162; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1148.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(ii) Application of the Legislation/559. Meanings of 'cross-country pipeline', 'local pipeline' and 'pipeline'.

(ii) Application of the Legislation

559. Meanings of 'cross-country pipeline', 'local pipeline' and 'pipeline'.

In the Pipe-lines Act 1962, except where the context otherwise requires, 'pipeline' means a pipe (together with any apparatus and works associated with it¹) or system of pipes (together with any apparatus and works associated with it) for the conveyance of any thing other than air, water, water vapour or steam², not being:

- 275 (1) a drain or sewer³; or
- 276 (2) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes⁴; or
- 277 (3) a pipe or system of pipes on the site of any operations or works to which, being building operations, certain provisions of the Factories Act 1961⁵ apply⁶; or
- 278 (4) a pipe or system of pipes wholly situated within the boundaries of an agricultural unit⁷ and designed for use for purposes of agriculture⁸; or
- 279 (5) a pipe or system of pipes wholly situated in premises used for the purposes of education or research⁹; or
- 280 (6) a pneumatic dispatch-tube¹⁰.

For the purposes of this definition, the following apparatus and works (and none other) are to be treated as being associated with a pipe (or system of pipes), namely:

- 281 (a) apparatus for inducing or facilitating the flow of any thing through the pipe or, as the case may be, through the system or any part of it¹¹;
- 282 (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to (or incorporated in the course of) the pipe or system¹²;
- 283 (c) apparatus for supplying energy for the operation of any apparatus mentioned in head (a) above or of any works as are mentioned in head (b) above¹³;
- 284 (d) apparatus for the transmission of information for the operation of the pipe or system¹⁴;
- 285 (e) apparatus for affording cathodic protection to the pipe or system¹⁵;
- 286 (f) a structure for the exclusive support of a part of the line or system¹⁶; and
- 287 (g) for certain purposes relating to the avoidance of construction of superfluous pipelines¹⁷, apparatus for treating and cooling petroleum¹⁸ which is to flow through (or through any part of) the pipe or system¹⁹.

In the Pipe-lines Act 1962, 'cross-country pipeline' means a pipeline whose length exceeds (or is intended to exceed) 16.093 kilometres²⁰; and 'local pipeline' means a pipeline other than a cross-country one²¹. For the purposes of the Pipe-lines Act 1962, the length of a pipeline is to be taken to be the total length of a pipe comprised in it²².

1 As to the apparatus and works associated with a pipeline see heads (a)-(g) in the text.

2 Pipe-lines Act 1962 s 65(1). As to the meaning of 'pipeline' for the purposes of the Petroleum Act 1998 Pt III (ss 14-28) (as amended) (submarine pipelines) see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1741.

3 Pipe-lines Act 1962 s 65(1)(a).

4 Ibid s 65(1)(b).

5 Ie the provisions listed in the Factories Act 1961 s 127(2) (as amended), which apply by virtue of s 127(1) (building operations and works of engineering construction: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 315): see the Pipe-lines Act 1962 s 65(1)(c). Any reference in the Pipe-lines Act 1962 to any other enactment is to be construed as a reference to that enactment as amended by any other Act: s 66(4).

6 Ibid s 65(1)(c).

7 For these purposes, 'agricultural unit' means land which is occupied as a unit for agricultural purposes: ibid s 66(1). As to the meaning of 'land' see PARA 557 note 8 ante.

8 Ibid s 65(1)(d). For these purposes, 'agriculture' includes dairy farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds; and 'agricultural' is to be construed accordingly: s 66(1).

9 Ibid s 65(1)(e).

10 Ibid s 65(1)(f).

11 Ibid s 65(2)(a).

12 Ibid s 65(2)(b).

13 Ibid s 65(2)(c).

14 Ibid s 65(2)(d).

15 Ibid s 65(2)(e).

16 Ibid s 65(2)(f).

17 Ie for the purposes of ibid s 9(8) (as added) (see PARA 585 post), s 9A(8) (as added) (see PARA 586 post), s 10E (as added) (see PARA 589 post) and s 10F (as added) (see PARA 589 post) only: see s 65(2)(g) (as added: see note 19 infra).

18 For these purposes, 'petroleum' includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, whether or not it has undergone any processing; but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation: ibid s 66(1). 'Gas' means any substance which consists wholly or mainly of methane, ethane, propane, butane, hydrogen or carbon monoxide or a mixture of two or more of those gases or a combustible mixture of one or more of those gases and air: s 66(1).

19 Ibid s 65(2)(g) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 8).

20 Pipe-lines Act 1962 s 66(1) (definition amended by the Pipe-lines (Metrication) Regulations 1992, SI 1992/449, reg 2(2)(b)(iii)).

21 Pipe-lines Act 1962 s 66(1). As to the power given to the Secretary of State to treat local pipelines as cross-country pipelines see PARA 582 post.

22 Ibid s 66(2). As to the position where the pipeline is or is to be within a factory, mine, quarry or petroleum depot see PARA 563 post. Where, in a system of pipes, a number of adjacent parallel lengths of pipe serve the same purpose as would be served by a single pipe of a diameter greater than that of any of those lengths, that number is to be taken to constitute a single pipe: s 66(2).

UPDATE

559 Meanings of 'cross-country pipeline', 'local pipeline' and 'pipeline'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(ii) Application of the Legislation/560. Exclusions in relation to a gas transporter and the United Kingdom Atomic Energy Authority.

560. Exclusions in relation to a gas transporter and the United Kingdom Atomic Energy Authority.

The provisions of the Pipe-lines Act 1962 relating to the construction¹ of cross-country pipelines² do not apply to works executed by the following bodies³, namely: (1) a gas transporter within the meaning of Part I of the Gas Act 1986⁴; and (2) the United Kingdom Atomic Energy Authority⁵.

Certain other provisions of the Pipe-lines Act 1962 which relate to powers of compulsory acquisition, to the placing of certain pipes and to obligations on persons executing pipeline works on agricultural land⁶ do not apply to either of those bodies⁷; and in other provisions of the Pipe-lines Act 1962 which relate to the requirement for owners of a pipeline to have sufficient funds to discharge liability, to certain notification requirements and to the avoidance of interference with certain lines⁸, references to a pipeline are to be construed as not including references to a pipeline vested in either of those bodies⁹.

1 For these purposes, 'construction' in relation to a pipeline (for the meaning of which see PARA 559 ante) includes placing; and 'construct' and 'constructed' are to be construed accordingly: Pipe-lines Act 1962 s 66(1).

2 *Ibid* s 1 (as amended) (see PARA 573 post): see s 58(2) (as amended: see note 3 infra). For the meaning of 'cross-country pipeline' see PARA 559 ante.

3 *Ibid* s 58(2) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 1(5)).

4 Pipe-lines Act 1962 s 58(1)(a) (substituted by the Gas Act 1995 s 16(1), Sch 4 para 6(1); amended by the Utilities Act 2000 s 76(7)). For the meaning of 'gas transporter' for these purposes see the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805): see the Pipe-lines Act 1962 s 58(1)(a) (as so substituted and amended). However, references in s 9A (as added and amended) (see PARA 586 post) and in s 10 (as amended) (see PARA 587 post) to an additional pipeline are to be construed as not including references to a pipeline constructed by and vested in (or proposed to be constructed by and proposed to be vested in) a gas transporter within the meaning of the Gas Act 1986 Pt I (as amended): Pipe-lines Act 1962 s 58(4A) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 7; amended by the Utilities Act 2000 s 76(7)).

5 Pipe-lines Act 1962 s 58(1)(f). As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

6 *Ibid* s 11 (as amended) (orders for compulsory acquisition of land) (see PARA 595 post), s 12 (as amended) (orders for compulsory acquisition of rights over land) (see PARA 597 et seq post), s 15 (as amended) (power to place pipelines in street) (see PARA 590 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 401-404), s 17(1) (repealed), s 20 (repealed), s 23 (repealed), s 25 (repealed), s 39 (as amended) (pipelines over or under harbour waters) (see PARA 593 post), s 45 (obligation to restore agricultural land) (see PARA 592 post): see s 58(3). As to s 17(1) (new s 16 substituted for ss 16, 17 as originally enacted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt IV para 101(1), (3)) see now the Pipe-lines Act 1962 s 16(5) (as so substituted); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 475. As to the repeal of ss 20-26, 27-32, 42 see the Pipelines Safety Regulations 1996, SI 1996/825, reg 30.

7 Pipe-lines Act 1962 s 58(3).

8 *Ibid* s 17(2) (repealed), s 26 (repealed), s 26A (as added) (availability of funds) (see PARA 618 post), s 27(1) (repealed), s 31(1) (repealed), s 33(1) (repealed), s 36(1) (as amended) (notification regarding changes to use of pipelines) (see PARA 580 post), s 37 (as amended) (notification of certain pipeline accidents) (see PARA 617 post), s 38 (as amended) (notification of changes to ownership of pipelines) (see PARA 581 post), s 40 (as amended) (avoidance of interference with lines) (see PARA 594 post): see s 58(4) (as amended: see note 9 infra). As to s 17(2) (new s 16 substituted for ss 16, 17 as originally enacted by the New Roads and Street Works Act

1991 Sch 8 Pt IV para 101(1), (3)) see the Pipe-lines Act 1962 s 16(4) (repealed by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 11(b)). As to the repeal of the Pipe-lines Act 1962 ss 20-26, 27-32, 42 see the Pipelines Safety Regulations 1996, SI 1996/825, reg 30.

9 Pipe-lines Act 1962 s 58(4) (amended by the Petroleum Act 1987 ss 26(2), 32(2); and the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 2(a), Sch 1). Notwithstanding the Pipe-lines Act 1962 s 58(4) (as amended), s 58A (added by the Gas Act 1995 Sch 4 para 6(2); amended by the Utilities Act 2000 s 76(7)) makes provision for references to a pipeline in the Pipe-lines Act 1962 s 27(1) (ss 27-32 repealed by the Pipelines Safety Regulations 1996, SI 1996/825, reg 30) and in the Pipe-lines Act 1962 s 31(1) (repealed) (protection of pipelines imperilled by buildings, structures or deposits) to include references to any pipeline operated by a gas transporter other than one laid in a street or a service pipe: see s 58A (as so added and amended). See also s 62, which makes provision for exclusions to apply to government pipelines in the references to a pipeline contained in ss 27, 31 (repealed).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(ii) Application of the Legislation/561. The Pipe-lines Act 1962 not to apply to the construction of certain small gas pipes.

561. The Pipe-lines Act 1962 not to apply to the construction of certain small gas pipes.

In relation to the construction¹ (by any person other than a gas transporter within the meaning of Part I of the Gas Act 1986²) of the following pipes³, namely any pipe:

- 288 (1) by which any premises are proposed to be connected to a distribution main⁴ of a gas transporter⁵; and
- 289 (2) by which gas is proposed to be conveyed to premises at a rate which is not expected to exceed 75,000 therms⁶ in any period of 12 months⁷,

references⁸ to a pipeline⁹ are to be construed as not including references to such a pipe¹⁰; and such references¹¹ to pipeline works¹² are to be construed as not including references to works executed in connection with the construction of such a pipe¹³.

The Secretary of State¹⁴ may, after consulting the Gas and Electricity Markets Authority¹⁵, by order amend head (1) and head (2) above by substituting¹⁶: (a) where the limit is for the time being expressed by reference to a number of therms, such lower number of therms as he considers appropriate or such lower limit (expressed by reference to a number of kilowatt hours) as he considers appropriate¹⁷; or (b) where the limit is for the time being expressed by reference to a number of kilowatt hours, such lower number of kilowatt hours as he considers appropriate¹⁸. Such an order is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament¹⁹.

These provisions are without prejudice to the exclusions made in relation to either a gas transporter within the meaning of Part I of the Gas Act 1986 or the United Kingdom Atomic Energy Authority²⁰.

1 As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

2 For the meaning of 'gas transporter' for these purposes see the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805): Pipe-lines Act 1962 s 58B(5) (s 58B added by the Gas Act 1995 s 16(1), Sch 4 para 6(2); the Pipe-lines Act 1962 s 58B(5) amended by the Utilities Act 2000 s 76(7)).

3 Pipe-Lines Act 1962 s 58B(1) (as added (see note 2 supra); amended by the Utilities Act 2000 s 76(7)).

4 For these purposes, 'distribution main' has the same meaning as in the Gas Act 1986 Pt I (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 836): Pipe-lines Act 1962 s 58B(5) (as added and amended: see note 2 supra).

5 Ibid s 58B(2)(a) (as added (see note 2 supra); amended by the Utilities Act 2000 s 76(7)).

6 In relation to any time after 31 December 1999, the reference in head (2) in the text to 75,000 therms is to be construed as a reference to 2,196,000 kilowatt hours: Pipe-lines Act 1962 s 58B(6) (as added: see note 2 supra).

7 Ibid s 58B(2)(b) (as added: see note 2 supra).

8 Ie references in ibid ss 1-14 (as amended) (control of construction of pipelines) (see PARA 573 et seq post): see s 58B(1)(a) (as added: see note 2 supra).

9 For the meaning of 'pipeline' see PARA 559 ante.

10 Pipe-lines Act 1962 s 58B(1)(a) (as added: see note 2 supra).

11 The references in *ibid* ss 1-14 (as amended) (control of construction of pipelines) (see PARA 573 et seq post): see s 58B(1)(b) (as added: see note 2 supra).

12 For these purposes, 'pipeline works' means works of any of the following kinds: (1) placing a pipeline or a length of pipeline; (2) inspecting, maintaining, adjusting, repairing, altering or renewing a pipeline or a length of pipeline; (3) changing the position of or removing a pipeline or a length of pipeline; and (4) breaking up or opening land for the purposes of works mentioned in heads (1)-(3) supra and tunnelling or boring for those purposes and other works requisite for or incidental to those purposes: *ibid* s 66(1).

13 *Ibid* s 58B(1)(b) (as added: see note 2 supra).

14 As to the Secretary of State see PARA 555 ante.

15 As to the Gas and Electricity Markets Authority see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 789.

16 Pipe-lines Act 1962 s 58B(3) (as added (see note 2 supra); amended by the Utilities Act 2000 s 3(2)).

17 Pipe-lines Act 1962 s 58B(3)(a) (as added: see note 2 supra).

18 *Ibid* s 58B(3)(b) (as added: see note 2 supra).

19 *Ibid* s 58B(4) (as added: see note 2 supra).

20 *Ibid* s 58B(7) (as added: see note 2 supra). The text refers to s 58B (as added and amended) being without prejudice to anything in s 58 (as amended) (see PARA 560 ante): s 58B(7) (as so added).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(ii) Application of the Legislation/562. Exclusions in relation to railway undertakers.

562. Exclusions in relation to railway undertakers.

The provisions relating to the construction¹ of cross-country pipelines² do not apply to works executed by railway undertakers³ for the purposes of their business other than the operation of pipelines⁴. The provisions relating to the compulsory acquisition of land⁵ and of rights over land⁶ for the construction of a pipeline do not have effect for the purpose of authorising railway undertakers to purchase land for the placing in it of a pipeline to be constructed for the above purposes (or a length of pipeline⁷ to be so constructed) or to place in⁸ land a pipeline to be so constructed (or a length of pipeline to be so constructed)⁹. In certain provisions of the Pipe-lines Act 1962 which relate to the requirement for owners of a pipeline to have sufficient funds to discharge liability, to certain notification requirements and to the avoidance of interference with certain lines¹⁰, references to a pipeline are to be construed as not including a pipeline vested in railway undertakers for the purposes of their business other than the operation of pipelines¹¹.

1 As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

2 I.e. the Pipe-lines Act 1962 s 1 (as amended) (see PARA 573 post): see s 59(1) (as amended: see note 4 infra). For the meanings of 'cross-country pipeline' and 'pipeline' see PARA 559 ante.

3 For these purposes, 'railway undertakers' means any person authorised by an enactment or provision of an order or scheme made or confirmed by an Act to construct, work or carry on a railway: *ibid* s 66(1).

4 *Ibid* s 59(1) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 1(6)).

5 I.e. the Pipe-lines Act 1962 s 11 (as amended) (see PARAS 595-596 post): see s 59(2). As to the meaning of 'land' see PARA 557 note 8 ante.

6 I.e. *ibid* s 12 (as amended) (see PARA 597 post): see s 59(2).

7 As to references to the length of a pipeline see *ibid* s 66(2); and PARA 559 ante.

8 In a context referring to a pipeline or a length of pipeline or works or operations in land or a street, 'in' includes a reference to a pipeline, length, works or operations under, over, across, along or upon it: *ibid* s 66(1).

9 *Ibid* s 59(2). In addition, s 15 (as amended) (power to place pipelines in streets) (see PARA 590 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 401-404) does not operate to empower railway undertakers to place in a street a pipeline constructed for the purposes of their business other than the operation of pipelines: s 59(3).

10 I.e. in *ibid* s 23 (repealed), s 25 (repealed), s 26 (repealed), s 26A (as added) (availability of funds) (see PARA 618 post), s 27(1) (repealed), s 31(1) (repealed), s 33(1) (repealed), s 36(1) (as amended) (notification regarding changes to use of pipelines) (see PARA 580 post), s 37 (as amended) (notification of certain pipeline accidents) (see PARA 617 post), s 38 (as amended) (notification of changes to ownership of pipelines) (see PARA 581 post), s 40 (as amended) (avoidance of interference with lines) (see PARA 594 post): see s 59(5) (as amended: see note 11 infra). A similar exclusion applies also in relation to s 21(1) (repealed): see s 59(4). As to the repeal of ss 20-26, 27-32, 42 see the Pipelines Safety Regulations 1996, SI 1996/825, reg 30.

11 Pipe-lines Act 1962 s 59(5) (amended by the Petroleum Act 1987 ss 26(2), 32(2); and the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 2(a), Sch 1).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(ii) Application of the Legislation/563. Exclusions in relation to factories, mines, quarries and petroleum depots.

563. Exclusions in relation to factories, mines, quarries and petroleum depots.

References in the substantive provisions¹ of the Pipe-lines Act 1962 to a pipeline² are to be construed as not including references to:

- 290 (1) a pipeline forming part of the equipment of (and situated wholly within) a factory³, premises comprised in a mine⁴ or quarry⁵, or a petroleum depot⁶; or
- 291 (2) so much of a pipeline forming part of the equipment of, and situated partly within and partly outside: (a) a factory⁷; (b) premises comprised in a mine or quarry⁸; or (c) a petroleum depot⁹, as is situated within that factory, those premises or that depot¹⁰;

and in computing the length of a pipeline that is or will be one to which head (2) above applies¹¹, so much of the pipeline as is or will be situated within the factory, premises or depot of whose equipment the pipeline forms or is to form part must be disregarded¹².

¹ I.e. the Pipe-lines Act 1962 ss 1-40 (as amended) (see PARA 573 et seq post): see s 60(1) (as amended: see note 6 infra).

² For the meaning of 'pipeline' see PARA 559 ante.

³ For these purposes, 'factory' has the same meaning as in the Factories Act 1961 s 175 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 318-319): Pipe-lines Act 1962 s 60(3)(a).

⁴ For these purposes, 'mine' has the same meaning as in the Mines and Quarries Act 1954 (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5): Pipe-lines Act 1962 s 60(3)(b).

⁵ For these purposes, 'quarry' has the same meaning as in the Quarries Regulations 1999, SI 1999/2024 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838): Interpretation Act 1978 s 17(2); Pipe-lines Act 1962 s 60(3)(b).

⁶ Ibid s 60(1) (amended by the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, s 2(a), Sch 1). For these purposes, 'petroleum depot' means premises used or appointed for use wholly or mainly for the storage of petroleum spirit, and includes a petroleum filling station: Pipe-lines Act 1962 s 60(3)(c). For the meaning of 'petroleum' for these purposes see PARA 559 note 18 ante.

⁷ Ibid s 60(2)(a).

⁸ Ibid s 60(2)(b).

⁹ Ibid s 60(2)(c).

¹⁰ See ibid s 60(2)(a)-(c).

¹¹ I.e. a pipeline to which the foregoing provisions of ibid s 60(2) (as amended) apply: see s 60(2) (as amended: see note 12 infra). As to computing the length of a pipeline generally see PARA 559 ante.

¹² Ibid s 60(2) (amended by the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, Sch 1).

UPDATE

563-564 Exclusions in relation to factories, mines, quarries and petroleum depots, Exclusions in relation to docks

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(ii) Application of the Legislation/564. Exclusions in relation to docks.

564. Exclusions in relation to docks.

References in the substantive provisions¹ of the Pipe-lines Act 1962 to a pipeline² and to pipeline works³ are to be construed as respectively not including references to a pipeline wholly situated in premises to which certain provisions of the Factories Act 1961 apply⁴, and to pipeline works executed in connection with a pipeline that is or will be wholly so situated⁵.

¹ The Pipe-lines Act 1962 ss 1-40 (as amended) (see PARA 573 et seq post): see s 61 (as amended: see note 5 infra).

² For the meaning of 'pipeline' see PARA 559 ante.

³ For the meaning of 'pipeline works' see PARA 561 note 12 ante.

⁴ The provisions listed in the Factories Act 1961 s 125(2) (as amended), which apply by virtue of s 125(1) (application to docks, etc: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 311): see the Pipe-lines Act 1962 s 61 (as amended: see note 5 infra). Any reference in the Pipe-lines Act 1962 to any other enactment is to be construed as a reference to that enactment as amended by any other Act: s 66(4).

⁵ Pipe-lines Act 1962 s 61 (amended by the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 2(a), Sch 1).

UPDATE

563-564 Exclusions in relation to factories, mines, quarries and petroleum depots, Exclusions in relation to docks

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(ii) Application of the Legislation/565. Exclusions where authorisation given before 1 January 1963.

565. Exclusions where authorisation given before 1 January 1963.

The provisions relating to the construction of cross-country pipelines¹ do not apply to works the execution of which had been begun before 1 January 1963² or which had been authorised by an Act passed before that date³ and, in the provisions of the Pipe-lines Act 1962 which give power to place pipelines in streets⁴, references to a pipeline are to be construed as not including references to a pipeline for the construction⁵ of which the execution of works had been so authorised⁶.

1 Ie the Pipe-lines Act 1962 s 1 (as amended) (see PARA 573 post) and s 2 (repealed): see s 63(1). The repeal of s 2 by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 1(1) has not been reflected in the wording of the Pipe-lines Act 1962 s 63(1): see s 63(1). For the meanings of 'cross-country pipeline' and 'pipeline' see PARA 559 ante.

2 Ie the date on which *ibid* s 1 (as amended) (see PARA 573 post) and s 2 (repealed) came into operation (see s 70(3); and the Pipe-lines Act 1962 (Commencement) Order 1962, SI 1962/2790): see the Pipe-lines Act 1962 s 63(1).

3 *Ibid* s 63(1). Any reference in the Pipe-lines Act 1962 to any other enactment is to be construed as a reference to that enactment as amended by any other Act: s 66(4).

4 Ie *ibid* s 15 (as amended) (power to place pipelines in streets) (see PARA 590 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 401-404): see s 63(2). References to s 17 (repealed), s 27 (repealed) and s 31 (repealed) remain in s 63(2): see s 63(2). As to s 17 (new s 16 substituted for ss 16, 17 as originally enacted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt IV para 101(1), (3)) see now the Pipe-lines Act 1962 s 16 (as so substituted); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 402 et seq. As to the repeal of ss 27-32 see the Pipelines Safety Regulations 1996, SI 1996/825, reg 30.

5 As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

6 Pipe-lines Act 1962 s 63(2).

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566. Power to make directions giving exclusion in respect of particular localities.

The Secretary of State¹, on an application in that behalf being made to him, and after causing if he thinks fit a public inquiry to be held², may by order³ direct that the provisions relating to the construction of cross-country pipelines⁴ are not to apply to works executed for the construction⁵ of a pipeline designed for the conveyance of a thing of a specified kind or class, being a pipeline wholly situated within a specified area⁶.

1 As to the Secretary of State see PARA 555 ante.

2 As to the general provisions as to public inquiries see PARA 602 et seq post.

3 The order is to be made by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: see the Pipe-lines Act 1962 s 64 (as amended: see note 6 infra). Such orders, being local, are not within the scope of this work, but for examples see the Pipe-lines (Devon and Cornwall China Clay Exclusion) Order 1963, SI 1963/1171; and the Pipe-lines (Cheshire Brine Pumping Exclusion) Order 1964, SI 1964/668.

4 I.e. the Pipe-lines Act 1962 s 1 (as amended) (see PARA 573 post): see s 64 (as amended: see note 6 infra). For the meanings of 'cross-country pipeline' and 'pipeline' see PARA 559 ante.

5 As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

6 Pipe-lines Act 1962 s 64 (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 1(7)).

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(iii) European Law

567. Environmental impact assessments.

The EC Council Directive on the assessment of the effects of certain public and private projects on the environment¹ gives rights to Member States of the European Economic Area to participate in the decision-making process where those projects are likely to affect their interests². Accordingly, in respect of relevant pipeline works which require the authorisation of the Secretary of State under the Pipe-lines Act 1962³, the following provision under the Pipe-line Works (Environmental Impact Assessment) Regulations 2000⁴ is made:

- 292 (1) applications for authorisation for the construction of certain pipelines are to be accompanied by an environmental statement⁵, except where an environmental statement is not mandatory and the Secretary of State, where he is satisfied that the pipeline works in question will not have a significant effect on the environment, directs otherwise⁶;
- 293 (2) the Secretary of State, when so requested, is to give a preliminary opinion to an applicant as to the information to be included in an environmental statement which the applicant is to submit⁷;
- 294 (3) persons proposing to carry out pipeline works may obtain information from the consultation bodies to assist in the preparation of environmental statements⁸;
- 295 (4) requirements are set out for publicity for (and public consultation on) the environmental statement and the application for authorisation⁹ and power is conferred on the Secretary of State to require persons proposing to carry out pipeline works to provide further information in relation to environmental statements submitted to him and for such information to be subject to similar publication requirements¹⁰;
- 296 (5) other EEA Member States may participate in the decision-making process in relation to pipeline works likely to have a significant effect on their environment¹¹;
- 297 (6) applications may be made to the court by persons challenging certain decisions of the Secretary of State and for the Secretary of State to make applications to the court to seek remedies in respect of the carrying out of pipeline works in breach of any conditions imposed to protect the environment¹²;
- 298 (7) offences are created in respect of the intentional or reckless submission of false or misleading information pursuant to the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 and, subject to certain exceptions, the carrying out of pipeline works in breach of any conditions imposed to protect the environment¹³;
- 299 (8) notices and other documents pursuant to the regulations must conform to the requirements so made¹⁴.

1 le Council Directive 85/337/EEC of 27 June 1985 (OJ L175, 05.07.85, p 40) on the assessment of the effects of certain public and private projects on the environment (amended by Council Directive 97/11/EC (OJ L73, 03.03.97, p 5)).

2 See also Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation Council Directives 85/337/EEC (OJ L156, 25.6.2003, p 17).

- 3 le authorisation for the construction of oil, gas or chemical pipelines on land in Great Britain: see PARA 573 et seq post. As to the Secretary of State see PARA 555 ante.
- 4 le the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928 (as amended).
- 5 See *ibid* reg 3 (amended by SI 2007/1992).
- 6 See the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 4, Sch 2 (reg 4 amended by SI 2007/1992).
- 7 See the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 5.
- 8 See *ibid* reg 6.
- 9 See *ibid* reg 7 (amended by SI 2007/1992). As to additional publicity see the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 8A (added by SI 2007/1992); and as to charges for the supply of environmental statements see the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 9 (amended by SI 2007/1992).
- 10 See the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 8 (amended by SI 2007/1992). As to additional information see the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 8A (as added: see note 9 *supra*); and as to charges that may be required for the supply of environmental statements and further information see reg 9 (as amended: see note 9 *supra*).
- 11 See *ibid* reg 10.
- 12 See *ibid* regs 11-13.
- 13 See *ibid* reg 14 (amended by SI 2007/1992); and PARAS 619, 628 post.
- 14 See the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 15.

UPDATE

567 Environmental impact assessments

NOTE 1--Directive 85/337 further amended: European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 114).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(iii) European Law/568. Conservation of natural habitats.

568. Conservation of natural habitats.

The EC Council Directive on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive')¹ is implemented by the Conservation (Natural Habitats etc) Regulations 1994². Accordingly, in relation to authorisations sought under the Pipe-lines Act 1962³, the provisions of that Act must be read in conjunction with the relevant provisions of the Conservation (Natural Habitats etc) Regulations 1994⁴.

1 The Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L206, 22.7.92, p 7) (as amended) as it is amended from time to time: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1) (definition substituted by SI 2007/1843); Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 3(1) (amended by SI 1997/3055).

2 As to the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, generally see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq.

3 See PARA 573 et seq post.

4 The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 75-78 (see PARAS 569-572 post).

As to the assessment of implications for European sites see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48; and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748. For the meaning of 'European site' see regs 2(1), 10 (reg 10 as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(iii) European Law/569. Application of general requirements.

569. Application of general requirements.

The requirement to consider the effect on a European site¹ applies in relation to the granting of a pipeline construction authorisation² under the Pipe-lines Act 1962³. Where in such a case the Secretary of State⁴ considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by granting an authorisation for the execution of works for the placing of the proposed pipeline along a modified route, he may, subject to certain provisions⁵, grant such an authorisation⁶.

The requirement to review existing decisions and consents⁷ applies to a pipeline construction authorisation under the Pipe-lines Act 1962 unless:

- 300 (1) the works to which the authorisation relates have been completed before the site became a European site or, if later, 30 October 1994⁸; or
- 301 (2) the authorisation was granted subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without them having been begun⁹; or
- 302 (3) it was granted for a limited period and that period has expired¹⁰.

Where, on the review of such an authorisation, the Secretary of State considers that any adverse effects on the integrity of a European site of the carrying out (or, as the case may be, the continuation of the plan or project) would be avoided by a variation of the authorisation, he may vary it accordingly¹¹. In conjunction with the review of any such authorisation, the Secretary of State must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it¹².

1 Ie the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 48-49 (as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748): see reg 75(1). For the meaning of 'European site' see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 10 (reg 10 as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729.

2 As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1 (as amended); and PARA 573 et seq post.

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 75(1).

4 As to the Secretary of State see PARA 555 ante.

5 Ie the provisions of the Pipe-lines Act 1962 Sch 1 (as amended) (see PARA 573 et seq post): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 75(2).

6 Ibid reg 75(2).

7 Ie ibid regs 50-51 (reg 50 as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748): see reg 75(3).

8 Ibid reg 75(3)(a). The commencement date of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended) was 30 October 1994: see reg 75(3)(b).

9 Ibid reg 75(3)(b).

10 Ibid reg 75(3)(c).

- 11 Ibid reg 75(4).
- 12 Ibid reg 75(5). As to directions deeming planning permission see PARA 584 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(iii) European Law/570. Procedure on review.

570. Procedure on review.

Where the Secretary of State¹ decides² to revoke or vary an authorisation under the Pipe-lines Act 1962 (or a direction deeming planning permission to be granted) he must serve notice³:

- 303 (1) on the person to whom the authorisation was granted or, as the case may be, in whose favour the direction was made⁴; and
- 304 (2) on any other person who in his opinion will be affected by the revocation or variation⁵,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to him⁶. The Secretary of State must also serve notice on: (a) the local planning authority⁷; and (b) the appropriate nature conservation body⁸, informing them of the decision and inviting their representations within the specified period⁹. The Secretary of State must consider whether to proceed with the revocation or variation, and must have regard to any representations so made to him¹⁰.

If, within the specified period, a person on whom notice was served under head (1) or head (2) above, or the local planning authority, so requires, the Secretary of State must, before deciding whether to proceed with the revocation or variation, give: (i) to them¹¹; and (ii) to any other person on whom notice under head (1), head (2), head (a) or head (b) above was required to be served¹², an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose¹³.

1 As to the Secretary of State see PARA 555 ante.

2 le in pursuance of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 75 (see PARA 569 ante): see reg 76(1).

3 Ibid reg 76(1).

4 Ibid reg 76(1)(a).

5 Ibid reg 76(1)(b).

6 Ibid reg 76(1).

7 Ibid reg 76(2)(a). For the meaning of 'local planning authority' see ibid reg 2(1); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 703.

8 Ibid reg 76(2)(b). For the meanings of 'appropriate nature conservation body' and 'nature conservation body' see ibid regs 2(1), 4 (reg 4 substituted by SI 2007/1843); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728.

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 76(2).

10 Ibid reg 76(3).

11 Ibid reg 76(4)(a).

12 Ibid reg 76(4)(b).

13 Ibid reg 76(4).

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571. Effect of review.

The revocation or variation¹ of an authorisation under the Pipe-lines Act 1962 (or of a direction deeming planning permission to be granted) takes effect upon service of the notices that are required² or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served³.

Where the Secretary of State⁴ decides not to proceed with the revocation or variation, the authorisation or direction has effect again from the time of that decision, and thereafter has effect as if⁵:

- 305 (1) any period specified in the authorisation or direction for the taking of any action, being a period which had not expired prior to the date such authorisation or direction was to have effect⁶, were extended by a period equal to that during which the revocation or variation had effect⁷; and
- 306 (2) there were substituted for any date specified in the authorisation or direction as being a date by which any action should be taken, not being a date falling prior to that date⁸, such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect⁹.

The revocation or variation¹⁰ of an authorisation under the Pipe-lines Act 1962 (or a direction deeming planning permission to be granted) does not affect anything done under the authorisation or direction prior to the revocation or variation taking effect¹¹.

1 Ie pursuant to the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 75 (see PARA 569 ante): see reg 77(1).

2 Ie required by ibid reg 76(1) (see PARA 570 ante): see reg 77(1).

3 Ibid reg 77(1).

4 As to the Secretary of State see PARA 555 ante.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 77(2).

6 Ie the date mentioned in ibid reg 77(1) (see the text to notes 1-3 supra): see reg 77(2)(a).

7 Ibid reg 77(2)(a).

8 Ie the date mentioned in ibid reg 77(1) (see the text to notes 1-3 supra): see reg 77(2)(b).

9 Ibid reg 77(2)(b).

10 Ie pursuant to ibid reg 75 (see PARA 569 ante): see reg 77(3).

11 Ibid reg 77(3).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(1) INTRODUCTION/(iii) European Law/572. Compensation for revocation or variation.

572. Compensation for revocation or variation.

Where a direction deeming planning permission to be granted is revoked or varied¹, that permission is treated for the purposes of Part IV of the Town and Country Planning Act 1990² (which relates to compensation) as having been revoked or modified by order³.

Where an authorisation under the Pipe-lines Act 1962 is so revoked or so varied, Part IV of the Town and Country Planning Act 1990 applies as if⁴: (1) the authorisation had been planning permission granted on an application under that Act and had been revoked or modified by order under that Act⁵; and (2) Part IV of the Town and Country Planning Act 1990 provided that the Secretary of State⁶ was the person liable to pay any compensation provided for by Part IV of that Act⁷.

Where the Secretary of State decides not to proceed with the revocation or variation of an authorisation under the Pipe-lines Act 1962 (or a direction deeming planning permission to be granted) any claim for compensation by virtue of these provisions is limited to any loss or damage directly attributable to the authorisation or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect⁸ and the Secretary of State deciding not to proceed with it⁹.

Where compensation is payable by virtue of these provisions, the question as to the amount of the compensation is referred to and determined by the Lands Tribunal¹⁰, unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with¹¹.

1 Ie pursuant to the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 75 (see PARA 569 ante): see reg 78(1).

2 Ie the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 914 et seq): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 78(1).

3 Ibid reg 78(1). The order referred to in the text is an order under the Town and Country Planning Act 1990 s 97 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 541): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 78(1).

4 Ibid reg 78(2). However, reg 78(2) does not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of reg 78(1) (see the text and notes 1-3 supra): see reg 78(2).

5 Ibid reg 78(2)(a). The text refers to revocation or modification by order under the Town and Country Planning Act 1990 s 97 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 541): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 78(2)(a).

6 As to the Secretary of State see PARA 555 ante.

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 78(2)(b).

8 Ie taking effect under ibid reg 77(1) (see PARA 571 ante): see reg 78(3).

9 Ibid reg 78(3).

10 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

11 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 78(4). As to the determination of compensation questions under the Pipe-lines Act 1962 itself see PARA 556 ante.

UPDATE

572 Compensation for revocation or variation

TEXT AND NOTES 10, 11--Reference to the Lands Tribunal is now to the Upper Tribunal: SI 1994/2716 reg 78(4) (amended by SI 2009/1307).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/573. Requirement for pipeline construction authorisation.

(2) CONTROL OF CONSTRUCTION

(i) Cross-country Pipelines

573. Requirement for pipeline construction authorisation.

It is unlawful for works to be executed in¹ land² for the construction of a cross-country pipeline³ except under an authorisation granted by the Secretary of State⁴ (a 'pipeline construction authorisation')⁵. Nor is it lawful for works to be executed otherwise than along the route delineated on the map annexed to the authorisation⁶ or within such limits of lateral deviation from that route as may be specified in the authorisation⁷. Nor may works be executed, except with the consent of the Secretary of State, by a person other than the one named in the application for the authorisation as he who will be the owner⁸ of the pipeline⁹. If works are executed in contravention of these provisions, the person executing them is liable on summary conviction to a fine¹⁰.

On an application for a pipeline construction authorisation, the Secretary of State has discretionary power to grant the application or refuse it¹¹.

After a pipeline construction authorisation has been granted, if the execution of the works authorised has not been substantially begun at the expiration of 12 months from the date on which it was granted¹², or at the expiration of any extension¹³ of that period which the Secretary of State may allow, the authorisation ceases to have any effect except as regards works previously executed¹⁴.

1 For the meaning of 'in' in this context see PARA 562 note 8 ante.

2 As to the meaning of 'land' see PARA 557 note 8 ante. For the purposes of the Pipe-lines Act 1962, the execution of works in land for the purpose of determining whether or not it is suitable for the placing in it of a pipeline and the carrying out of surveying operations for the purpose of settling the route of a proposed pipeline are deemed not to constitute the execution of works for the construction of a pipeline: s 66(3). For the meaning of 'pipeline' see PARA 559 ante. For the meaning of 'pipeline works' see PARA 561 note 12 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

3 For the meaning of 'cross-country pipeline' see PARA 559 ante.

4 As to the Secretary of State see PARA 555 ante.

5 Pipe-lines Act 1962 ss 1(1), 66(1). As to the exclusion of s 1 (as amended) see PARAS 560-566 ante. As to the procedure on an application for the authorisation see PARA 574 post; and as to the contents of the authorisation see PARA 576 post. As to the requirement for environmental impact assessments to be considered alongside applications for the authorisation for the construction of oil, gas or chemical pipelines on land in Great Britain see PARA 567 ante; and as to the requirement to consider the effect on a European site, in relation to the granting of a pipeline construction authorisation, see PARAS 568-572 ante. As to the former authorisation procedure (requiring an Act to be promoted under the private Bill procedure) which the Pipe-lines Act 1962 replaced see PARA 554 ante.

For these purposes, the construction of a diversion to a pipeline is to be treated as the construction of a separate pipeline and, if the diversion is to a pipeline which is the subject of a pipeline construction authorisation but the length of that pipeline which is being diverted has not been constructed, the construction of the diversion is to be treated as the construction of a cross-country pipeline whatever the length of the diversion: s 1(1A) (added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 2(2)). 'Diversion' means a lateral diversion of any length of a pipeline (whether or not that pipeline has been

constructed) where the diversion is either beyond the limits of lateral diversion permitted by an authorisation under the Pipe-lines Act 1962 relating to that pipeline or, if no such authorisation is required, beyond the lateral limits of deviation permitted by planning permission granted in relation to that pipeline under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq): Pipe-lines Act 1962 s 66(1) (definition added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 15(b)). As to the length of a pipeline see the Pipe-lines Act 1962 s 66(2); and PARA 559 ante.

The repeal, by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 3, of the Pipe-lines Act 1962 s 7, which formerly deemed that the construction of connecting pipelines constituted the construction of a cross-country pipeline where the aggregate lengths of the lines involved exceeded 16.093 kilometres in length, means that now an authorisation from the Secretary of State is only required for the construction of a pipeline where the length of the line being constructed is over 16.093 kilometres in length regardless of the length of any pipe to which the new line is to be connected.

6 The scale of the map annexed to every pipeline construction authorisation must be not less than 1 in 10,560: see *ibid* s 1(3), Sch 1 para 7 (Sch 1 para 7 amended by the Pipe-lines (Metrication) Regulations 1992, SI 1992/449, reg 2(2)(a)(ii)).

7 Pipe-lines Act 1962 s 1(1). A pipeline construction authorisation may specify limits within which lateral deviation from the route to be taken by the proposed pipeline is permissible: see Sch 1 para 6B(2) (as added); and PARA 576 post. As to pipeline construction authorisations see further PARAS 574-576 post.

8 For the meaning of 'owner' see PARA 557 note 7 ante.

9 Pipe-lines Act 1962 s 1(1).

10 See *ibid* s 1(1) (as amended); and PARA 619 post. As to the power of the Secretary of State to remove works executed in contravention of s 1(1) (as amended) see PARA 583 post.

11 Pipe-lines Act 1962 s 1(2).

12 For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

13 The Secretary of State must not allow any such extension of the time within which the authorised execution in any land of the works must be begun unless he is satisfied that notice of the making of the application for the extension has been given to every person specified in *ibid* s 1(6) (as added), and that sufficient time has elapsed to allow every person to whom the notice was given an opportunity of making to the Secretary of State a written objection to the application: s 1(5) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, art 2, Schedule para 4(1)(a)). The persons specified for these purposes are an owner, lessee, tenant (whatever the tenancy period) or occupier of the land, a person to whom the applicant would, if it were proceeding to purchase that land under the Compulsory Purchase Act 1965 s 5(1) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 616), be required to give notice to treat, or a person who the applicant thinks would be likely to be entitled to make a claim for compensation under the Compulsory Purchase Act 1965 s 10 (as amended) (compensation for injurious affection) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 718) if that land were purchased under a compulsory purchase order, so far as he is known to the applicant after making diligent inquiry: Pipe-lines Act 1962 s 1(6) (added by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, Schedule para 4(1)(b)). For the meaning of 'notice' see PARA 555 note 4 ante.

14 Pipe-lines Act 1962 s 1(4). As to the consequential revocation of a compulsory rights order see s 12(5) (as substituted); and PARA 599 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/574. Application for pipeline construction authorisation.

574. Application for pipeline construction authorisation.

An application for the grant of a pipeline construction authorisation¹ must be made to the Secretary of State² in writing and must:

- 307 (1) state the name and address of the person who will be the owner³ of the proposed pipeline⁴;
- 308 (2) specify the points between which the proposed pipeline is to run and be accompanied by three copies of a map⁵ on which is delineated the route between those points which the pipeline is to take, subject to any lateral deviation from the route within such limits (if any) which the authorisation may specify⁶;
- 309 (3) state whether or not the grant of any rights or the giving of any street works consent or river works consent⁷ is required to enable the proposed pipeline to be constructed and, during the period during which it may reasonably be expected to remain, to be inspected, maintained, adjusted, repaired and renewed, and if the grant of any rights or the giving of those consents is required, the application must specify those rights and consents and state with respect to each of them whether their grant has been or can be obtained⁸;
- 310 (4) state what is proposed to be conveyed in the proposed pipeline⁹;
- 311 (5) contain such other particulars, if any, as may be prescribed¹⁰.

Where an application is duly made to the Secretary of State he must take it into consideration and give notice¹¹ to the applicant of his decision either that he refuses to grant the application¹² or that the application is to be allowed to proceed, but without prejudice to its subsequent refusal in the exercise of his discretion¹³. Where notice is so given that the application is to be allowed to proceed, the applicant must comply with certain requirements as a condition precedent to the taking by the Secretary of State of further steps in the matter of the application¹⁴, namely:

- 312 (a) the applicant must publish in the London Gazette¹⁵ (and subsequently also in such other manner as the Secretary of State may direct as appears to him to be best calculated for informing persons inhabiting land in the vicinity of the route to be taken by the proposed pipeline) a notice stating that application has been made to him for the grant of the authorisation, naming a place where a copy of the map that accompanied the application can be inspected, and stating the time (not being less than 28 days from the date of the happening of the relevant event¹⁶) within which (and the manner in which) objections to the application may be sent to the Secretary of State¹⁷; and
- 313 (b) the applicant must serve an identical notice on every local planning authority¹⁸ in whose area any part of the proposed pipeline will lie¹⁹ and on any other persons as may be specified by the Secretary of State²⁰.

The Secretary of State may if he thinks fit cause a public inquiry²¹ to be held with respect to an application for the grant of a pipeline construction authorisation whether or not any objection to the application (or to any modification of the route proposed in it) is made or maintained²².

- 1 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARAS 573 ante, 575, 576 post. As to offences for contravening authorisations see PARA 619 post; and as to penalties for sending a false application see s 46 (as amended); and PARA 628 post. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.
- 2 As to the Secretary of State see PARA 555 ante.
- 3 For the meaning of 'owner' see PARA 557 note 7 ante.
- 4 Pipe-lines Act 1962 s 1(3), Sch 1 para 1(a).
- 5 The scale of the map must not be less than 1 in 10,560: *ibid* Sch 1 para 1(b) (amended by the Pipe-lines (Metrication) Regulations 1992, SI 1992/449, reg 2(2)(a)(ii)).
- 6 Pipe-lines Act 1962 Sch 1 para 1(b) (as amended: see note 5 *supra*). As to the conditions in which a cross-country pipeline constructed under a pipeline construction authorisation may be placed along a modified route see PARA 576 post.
- 7 For these purposes, 'street works consent' means a consent given under *ibid* s 15 (as amended) (power to place pipelines in streets) (see PARA 590 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 401-404); s 66(1). 'River works consent' means a consent given under the Water Resources Act 1991 s 109 (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARA 603); Pipe-lines Act 1962 s 66(1) (definition substituted by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 12).
- 8 Pipe-lines Act 1962 Sch 1 para 1(c). As to the compulsory acquisition of rights over land see PARA 597 et seq post.
- 9 *Ibid* Sch 1 para 1(d). As to the substances which may not be conveyed in a pipeline see PARA 559 ante.
- 10 *Ibid* Sch 1 para 1(e). 'Prescribed' means prescribed by regulations made under the Pipe-lines Act 1962: s 66(1). At the date at which this volume states the law no such regulations had been made for the purposes of Sch 1 (as amended). As to the making of regulations under the Pipe-lines Act 1962 generally see PARA 555 ante.
- 11 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.
- 12 Where the Secretary of State refuses an application for the grant of a pipeline construction authorisation he must give the applicant a written statement of his reasons for so doing: Pipe-lines Act 1962 Sch 1 para 5.
- 13 *Ibid* Sch 1 para 2. As to the Secretary of State's discretion regarding whether he should grant or refuse the application see PARA 573 ante.
- 14 *Ibid* Sch 1 para 3(1).
- 15 *Ie* in relation to an application for the grant of an authorisation for the execution of works for the placing of a proposed pipeline along a route lying wholly in England and Wales: see *ibid* Sch 1 para 3(2)(a). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. As to when the notice must be published in the *Edinburgh Gazette* see Sch 1 para 3(2)(b); and as to when the notice must be published in the *London Gazette* and in the *Edinburgh Gazette* see Sch 1 para 3(2)(c).
- 16 As to the reckoning of periods see PARA 573 note 12 ante. In relation to a notice published in compliance with *ibid* Sch 1 para 3(1)(a), 'relevant event' means the publication or first publication of the notice in the manner directed by the Secretary of State; and in relation to a notice served in compliance with the requirement of Sch 1 para 3(1)(b) (see head (b) in the text), the service of the notice: Sch 1 para 3(2).
- 17 *Ibid* Sch 1 para 3(1)(a). As to the making of objections see PARA 575 post.
- 18 For these purposes, 'local planning authority' means an authority which for the purposes of the Town and Country Planning Act 1990 Pt I (ss 1-9) (as amended) (which has replaced the provisions mentioned in the Pipe-lines Act 1962 Sch 1 para 8) is a local planning authority (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28); Pipe-lines Act 1962 Sch 1 para 8; Interpretation Act 1978 s 17(2).
- 19 For the meaning of 'in' in this context see PARA 562 note 8 ante.
- 20 Pipe-lines Act 1962 Sch 1 para 3(1)(b).

21 As to public inquiries, and the procedure to be followed in them, see PARA 602 et seq post.

22 Pipe-lines Act 1962 Sch 1 para 6B(1) (added by the Petroleum Act 1987 s 25).

UPDATE

574 Application for pipeline construction authorisation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/575. Objections to an application for pipeline construction authorisation.

575. Objections to an application for pipeline construction authorisation.

Where the proper notices¹ concerning an application for the grant of a pipeline construction authorisation² have been duly published and served³ and an objection to the application is duly made by a local planning authority⁴ and is not withdrawn, the Secretary of State⁵ must, before granting the application⁶, either:

- 314 (1) cause a public inquiry⁷ to be held with respect to the objection and consider the report of the person who held the inquiry⁸; or
- 315 (2) consider the objection by the written representations procedure⁹.

Where the proper notices have been duly published and served and an objection duly made by a person other than a local planning authority¹⁰ and is not withdrawn, the Secretary of State must, before granting the application¹¹:

- 316 (a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry¹²; or
- 317 (b) afford to the person making the objection an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose and consider the report of the person so appointed¹³; or
- 318 (c) consider the objection by the written representations procedure¹⁴.

Where the Secretary of State decides in this way¹⁵ to consider an objection to an application under the written representations procedure, he must give notice to the applicant and to every person who has made an objection to the application that the objection will be considered by written representations¹⁶. However, the Secretary of State must cease considering an objection to an application under the written representations procedure if, at any time before he has determined whether to grant the application¹⁷:

- 319 (i) the Secretary of State receives notice from the applicant or any person who has made an objection to the application to the effect that he does not wish to proceed by way of written representations¹⁸; or
- 320 (ii) the Secretary of State decides to cause a public inquiry to be held (or to afford the objectors a hearing) instead of proceeding by way of written representations¹⁹.

The Secretary of State may at any time before he has determined whether to grant the application direct that the written representations procedure is to apply to an objection to an application from the date of the direction, but only if the applicant and every objector to the application consents to the use of that procedure²⁰.

1 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

2 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARAS 573-574 ante, 576 post. For the

meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

3 le under ibid Sch 1 para 3 (see PARA 574 ante): see Sch 1 para 4(1) (as substituted: see note 6 infra).

4 le in accordance with a notice under ibid Sch 1 para 3 (see PARA 574 ante): see Sch 1 para 4(1) (as substituted: see note 6 infra). For the meaning of 'local planning authority' see PARA 574 note 18 ante.

5 As to the Secretary of State see PARA 555 ante.

6 Pipe-lines Act 1962 Sch 1 para 4(1) (Sch 1 para 4 substituted by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 4(1)).

7 As to public inquiries, and the procedure to be followed in them, see PARA 602 et seq post.

8 Pipe-lines Act 1962 Sch 1 para 4(1)(a) (as substituted: see note 6 supra).

9 Ibid Sch 1 para 4(1)(b) (as substituted: see note 6 supra). The text refers to consideration of the objection by the written representations procedure in accordance with the provisions of Sch 1 para 8A (as added) (see PARA 578 post): see Sch 1 para 4(1)(b) (as so substituted).

10 le where the proper notices have been duly published and served under, and an objection duly made in accordance with a notice under, ibid Sch 1 para 3 (see PARA 574 ante): see Sch 1 para 4(2) (as substituted: see note 6 supra).

11 Ibid Sch 1 para 4(2) (as substituted: see note 6 supra).

12 Ibid Sch 1 para 4(2)(a) (as substituted: see note 6 supra).

13 Ibid Sch 1 para 4(2)(b) (as substituted: see note 6 supra).

14 Ibid Sch 1 para 4(2)(c) (as substituted: see note 6 supra). The text refers to consideration of the objection by the written representations procedure in accordance with the provisions of Sch 1 para 8A (as added) (see PARA 578 post): see Sch 1 para 4(2)(c) (as so substituted).

15 le decides under ibid Sch 1 para 4 (see the text and notes 1-14 supra): see Sch 1 para 4A(1) (as added: see note 16 infra).

16 Ibid Sch 1 para 4A(1) (Sch 1 para 4A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 4(1)). However, the procedure set out in the text does not apply if the Secretary of State receives a notice under the Pipe-lines Act 1962 Sch 1 para 4A(2) (as added): see Sch 1 para 4A(1) (as so added). Accordingly, the written representations procedure does not apply to an objection to an application if either the applicant or any person who has made an objection to that application gives the Secretary of State notice, no later than 28 days from the date on which the notice under Sch 1 para 4A(1) (as added) is served on him, that he does not wish to proceed by way of written representations: Sch 1 para 4A(2) (as so added). On receiving a notice under Sch 1 para 4A(2) (as added), the Secretary of State must give notice to the applicant and to every person who has made an objection to the application that the written representations procedure will not be used and, where a local planning authority is one of the objectors, that he will cause a public inquiry to be held in accordance with Sch 1 para 4(1)(a) (as substituted) (see head (1) in the text) and, in any other case, that he will either cause a public inquiry to be held or afford the objectors a hearing in accordance with Sch 1 para 4(2) (as substituted) (see heads (a), (b) in the text): Sch 1 para 4A(3) (as so added).

17 Ibid Sch 1 para 4A(4) (as added: see note 16 supra). Where an objection to an application ceases to be considered under the written representations procedure by virtue of Sch 1 para 4A(4) (as added), the Secretary of State must give notice to the applicant and to every person who has made an objection to the application that that procedure has ceased and, where a local planning authority is one of the objectors, that he will cause a public inquiry to be held in accordance with Sch 1 para 4(1)(a) (as substituted) (see head (1) in the text) and, in any other case, that he will either cause a public inquiry to be held or afford the objectors a hearing in accordance with Sch 1 para 4(2) (as substituted) (see heads (a), (b) in the text): Sch 1 para 4A(5) (as so added). If a notice under Sch 1 para 4A(5) (as added) is given, the Secretary of State may direct that any step already taken in satisfaction of any requirement under any one of the three procedures (that is to say, the public inquiry, hearing or written representations procedure: see the text and notes 1-14 supra) is deemed to any extent he thinks fit to be a step taken in satisfaction of any similar requirement under another of the procedures: Sch 1 para 4A(7) (as so added).

18 Ibid Sch 1 para 4A(4)(a) (as added: see note 16 supra).

19 Ibid Sch 1 para 4A(4)(b) (as added: see note 16 supra).

20 Ibid Sch 1 para 4A(6) (as added: see note 16 supra). If a direction under Sch 1 para 4A(6) (as added) is given, the Secretary of State may direct that any step already taken in satisfaction of any requirement under any one of the three procedures (that is to say, the public inquiry, hearing or written representations procedure: see the text and notes 1-14 supra) is deemed to any extent he thinks fit to be a step taken in satisfaction of any similar requirement under another of the procedures: Sch 1 para 4A(7) (as so added).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/576. Nature of authorisation and procedure for making modifications to it.

576. Nature of authorisation and procedure for making modifications to it.

A pipeline construction authorisation¹ may authorise the execution of works for the placing of the proposed pipeline along the route delineated on the map², copies of which accompanied the application for the grant of the authorisation, or³ along a modified route⁴.

However, the authorisation may not authorise the execution of works for the placing of the proposed pipeline along a modified route unless the applicant has given a notice⁵ relating to the modified route to every local planning authority⁶ within whose area any modification of the route occurs, and any person specified by the Secretary of State⁷. Such a notice must state the time within which objections to the modification can be sent to the Secretary of State and must contain such other particulars as he may direct⁸. The time so stated must not be less than 28 days from the date on which the notice is served or such shorter time, being not less than 14 days, as the Secretary of State may direct⁹.

A pipeline construction authorisation may specify limits within which lateral deviation from the route to be taken by the proposed pipeline is permissible¹⁰.

1 As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARAS 573-575 ante; as to the need for an authorisation in relation to cross-country pipelines see PARA 573 ante; and as to the application see PARAS 574-575 ante. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

2 Every pipeline construction authorisation must have annexed to it a map, the scale of which is not less than 1 in 10,560, indicating the route along which the proposed pipeline is authorised to be placed by means of the execution of works authorised by the authorisation: see *ibid* s 1(3), Sch 1 para 7 (as amended); and PARA 573 ante.

3 This is subject to *ibid* Sch 1 para 6A (as added) (see the text to notes 5-10 *infra*): see Sch 1 para 6(1) (as amended: see note 4 *infra*).

4 *Ibid* Sch 1 para 6(1) (amended by the Petroleum Act 1987 s 25).

5 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

6 For the meaning of 'local planning authority' see PARA 574 note 18 ante.

7 Pipe-lines Act 1962 Sch 1 para 6A(1) (Sch 1 paras 6A, 6B added by the Petroleum Act 1987 s 25). As to the Secretary of State see PARA 555 ante.

8 Pipe-lines Act 1962 Sch 1 para 6A(2) (as added: see note 7 *supra*). As to the making of objections to placing the proposed pipeline along a modified route see PARA 577 post.

9 *Ibid* Sch 1 para 6A(3) (as added: see note 7 *supra*).

10 *Ibid* Sch 1 para 6B(2) (as added: see note 7 *supra*). See further PARA 574 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/577. Objections to placing the proposed pipeline along a modified route.

577. Objections to placing the proposed pipeline along a modified route.

Where a local planning authority¹ duly makes an objection to the placing of a proposed pipeline², which has been authorised by a pipeline construction authorisation³, along a modified route⁴ and does not withdraw it, the Secretary of State⁵ must, before granting the application⁶, either:

- 321 (1) cause a public inquiry⁷ to be held with respect to the objection and consider the report of the person who held the inquiry⁸; or
- 322 (2) consider the objection by the written representations procedure⁹.

Where a person other than a local planning authority makes such an objection¹⁰ and does not withdraw it, the Secretary of State must, before granting the application¹¹:

- 323 (a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry¹²; or
- 324 (b) afford to the person making the objection an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose and consider the report of the person so appointed¹³; or
- 325 (c) consider the objection by the written representations procedure¹⁴.

Where the Secretary of State decides in this way¹⁵ to consider an objection to a modified application under the written representations procedure, he must give notice to the applicant and to every person who has made an objection to the modified application that the objection will be considered by written representations¹⁶. However, the Secretary of State must cease considering an objection to a modified application under the written representations procedure if, at any time before he has determined whether to grant the application¹⁷:

- 326 (i) the Secretary of State receives notice from the applicant or any person who has made an objection to the modified application to the effect that he does not wish to proceed by way of written representations¹⁸; or
- 327 (ii) the Secretary of State decides to cause a public inquiry to be held (or to afford the objectors a hearing) instead of proceeding by way of written representations¹⁹.

The Secretary of State may at any time before he has determined whether to grant the modification to the application direct that the written representations procedure is to apply to an objection to a modified application from the date of the direction, but only if the applicant and every objector to the modification consents to the use of that procedure²⁰.

1 For the meaning of 'local planning authority' see PARA 574 note 18 ante.

2 For the meaning of 'pipeline' see PARA 559 ante.

3 As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARAS 573-576 ante; as to the need for an authorisation in relation to cross-country pipelines see PARA 573 ante; and as to

the application see PARAS 574-575 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

4 The text refers to an objection made in accordance with a notice under *ibid* s 1(3), Sch 1 para 6A(1) (as added) (see PARA 576 ante): see Sch 1 para 6A(4) (as added: see note 6 *infra*). As to the authorisation of works for the placing of the proposed pipeline along a modified route see PARA 576 ante.

5 As to the Secretary of State see PARA 555 ante.

6 Pipe-lines Act 1962 Sch 1 para 6A(4) (Sch 1 para 6A added by the Petroleum Act 1987 s 25; the Pipe-lines Act 1962 Sch 1 para 6A(4)-(5) substituted, Sch 1 para 6A(6) added, by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 4(2)).

7 As to public inquiries, and the procedure to be followed in them, see PARA 602 *et seq post*.

8 Pipe-lines Act 1962 Sch 1 para 6A(4)(a) (Sch 1 para 6A as added, Sch 1 para 6A(4)(a) as substituted: see note 6 *supra*).

9 *Ibid* Sch 1 para 6A(4)(b) (Sch 1 para 6A as added, Sch 1 para 6A(4)(b) as substituted: see note 6 *supra*). The text refers to consideration of the objection by the written representations procedure in accordance with the provisions of Sch 1 para 8A (as added) (see PARA 578 *post*): see Sch 1 para 6A(4)(b) (Sch 1 para 6A as so added, Sch 1 para 6A(4)(b) as so substituted).

10 *Ie* in accordance with a notice under *ibid* Sch 1 para 6A(1) (as added) (see PARA 576 ante): see Sch 1 para 6A(5) (Sch 1 para 6A as added, Sch 1 para 6A(5) as substituted: see note 6 *supra*).

11 *Ibid* Sch 1 para 6A(5) (Sch 1 para 6A as added, Sch 1 para 6A(5) as substituted: see note 6 *supra*).

12 *Ibid* Sch 1 para 6A(5)(a) (Sch 1 para 6A as added, Sch 1 para 6A(5)(a) as substituted: see note 6 *supra*).

13 *Ibid* Sch 1 para 6A(5)(b) (Sch 1 para 6A as added, Sch 1 para 6A(5)(b) as substituted: see note 6 *supra*).

14 *Ibid* Sch 1 para 6A(5)(c) (Sch 1 para 6A as added, Sch 1 para 6A(5)(c) as substituted: see note 6 *supra*). The text refers to consideration of the objection by the written representations procedure in accordance with the provisions of Sch 1 para 8A (as added) (see PARA 578 *post*): see Sch 1 para 6A(5)(c) (Sch 1 para 6A as so added, Sch 1 para 6A(5)(c) as so substituted).

15 *Ie* decides under *ibid* Sch 1 para 6A(4), (5) (Sch 1 para 6A as added, Sch 1 para 6A(4), (5) as substituted) (see the text and notes 1-14 *supra*): see Sch 1 para 4A(1) (as added and applied: see note 16 *infra*).

16 *Ibid* Sch 1 para 4A(1) (Sch 1 para 4A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 4(1)), the Pipe-lines Act 1962 Sch 1 para 4A (as so added) applied by Sch 1 para 6A(6) (as added: see note 6 *supra*).

However, the procedure set out in the text does not apply if the Secretary of State receives a notice under the Pipe-lines Act 1962 Sch 1 para 4A(2) (as added and applied): see Sch 1 para 4A(1) (as so added and applied). Accordingly, the written representations procedure does not apply to an objection to a modified application if either the applicant or any person who has made an objection to that modification gives the Secretary of State notice, no later than 28 days from the date on which the notice under Sch 1 para 4A(1) (as added and applied) is served on him, that he does not wish to proceed by way of written representations: Sch 1 para 4A(2) (as so added and applied). On receiving a notice under Sch 1 para 4A(2) (as added and applied), the Secretary of State must give notice to the applicant and to every person who has made an objection to the modified application that the written representations procedure will not be used and, where a local planning authority is one of the objectors, that he will cause a public inquiry to be held in accordance with Sch 1 para 6A(4)(a) (Sch 1 para 6A as added, Sch 1 para 6A(4)(a) as substituted) (see head (1) in the text) and, in any other case, that he will either cause a public inquiry to be held or afford the objectors a hearing in accordance with Sch 1 para 6A(5) (Sch 1 para 6A as added, Sch 1 para 6A(5) as substituted) (see heads (a), (b) in the text): Sch 1 para 4A(3) (as so added and applied).

17 *Ibid* Sch 1 para 4A(4) (as added and applied: see note 16 *supra*). Where an objection to a modified application ceases to be considered under the written representations procedure by virtue of Sch 1 para 4A(4) (as added and applied), the Secretary of State must give notice to the applicant and to every person who has made an objection to the modification that that procedure has ceased and, where a local planning authority is one of the objectors, that he will cause a public inquiry to be held in accordance with Sch 1 para 6A(4)(a) (Sch 1 para 6A as added, Sch 1 para 6A(4)(a) as substituted) (see head (1) in the text) and, in any other case, that he will either cause a public inquiry to be held or afford the objectors a hearing in accordance with Sch 1 para 6A(5) (Sch 1 para 6A as added, Sch 1 para 6A(5) as substituted) (see heads (a), (b) in the text): Sch 1 para 4A(5) (as so added and applied). If a notice under Sch 1 para 4A(5) (as added and applied) is given, the Secretary of State may direct that any step already taken in satisfaction of any requirement under any one of

the three procedures (that is to say, the public inquiry, hearing or written representations procedure: see the text and notes 1-14 supra) is deemed to any extent he thinks fit to be a step taken in satisfaction of any similar requirement under another of the procedures: Sch 1 para 4A(7) (as so added and applied).

18 Ibid Sch 1 para 4A(4)(a) (as added and applied: see note 16 supra).

19 Ibid Sch 1 para 4A(4)(b) (as added and applied: see note 16 supra).

20 Ibid Sch 1 para 4A(6) (as added and applied: see note 16 supra). If a direction under Sch 1 para 4A(6) (as added and applied) is given, the Secretary of State may direct that any step already taken in satisfaction of any requirement under any one of the three procedures (that is to say, the public inquiry, hearing or written representations procedure: see the text and notes 1-14 supra) is deemed to any extent he thinks fit to be a step taken in satisfaction of any similar requirement under another of the procedures: Sch 1 para 4A(7) (as so added and applied).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/578. Written representations procedure for objections to pipeline construction authorisation.

578. Written representations procedure for objections to pipeline construction authorisation.

Where no notice¹ has been received by the Secretary of State² from either the applicant for a pipeline construction authorisation³ or any person who has made an objection to that application (or to its modification)⁴ to the effect that he does not wish to proceed by way of written representations⁵, and an objection to an application (or to its modification) is to be considered by the written representations procedure, the Secretary of State must (if he has not already done so) serve a copy of the objection on the applicant and must give notice to the applicant and to the person who has made the objection that⁶: (1) the application (or its modification) is to be considered by the written representations procedure⁷; and (2) the applicant may, no later than 28 days from the date on which the notice is served on him, submit written representations to the Secretary of State on the objection⁸.

The Secretary of State must, no later than seven days from the last day on which the applicant could submit representations under head (2) above: (a) serve a copy of any representations so made by the applicant on the person who made the objection to which the representations relate⁹; and (b) notify that objector that he may, no later than 21 days from the date on which the notice is served on him, submit a written response to the representations to the Secretary of State¹⁰. The Secretary of State must serve a copy of any response received from the objector under head (b) above on the applicant no later than seven days from the last day on which the objector could respond¹¹.

The Secretary of State may, at any time before determining the application (or its modification), by notice require the applicant or any objector to submit, within such reasonable time as the notice may specify, such further information in relation to an application (or its modification) or objection as the notice may specify and must not, in such a case, determine the application (or to its modification) until he has afforded to any person he considers affected by such further information a reasonable opportunity of commenting upon it¹².

The Secretary of State may allow further time for the taking of any step under the written representations procedure¹³, including a step to be taken by himself¹⁴.

1 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

2 As to the Secretary of State see PARA 555 ante.

3 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARAS 573-575 ante. As to the nature of the authorisation and the procedure for making modifications to it see PARA 576 ante. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

4 As to the procedure for objections made to applications for pipeline construction authorisation see PARA 575 ante; and as to the procedure for objections made to placing the proposed pipeline along a modified route see PARA 577 ante.

5 The text refers to receipt of a notice under the Pipe-lines Act 1962 s 1(3), Sch 1 para 4A(2) (as added) (see PARA 575 ante) or under Sch 1 para 4A(2) (as added) as it is applied by Sch 1 para 6A(6) (as added) for the purposes of considering objections to a modification to a pipeline construction authorisation (see PARA 577 ante); see Sch 1 para 8A(1) (as added: see note 6 infra).

- 6 Ibid Sch 1 para 8A(1) (Sch 1 para 8A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 4(3)).
- 7 Pipe-lines Act 1962 Sch 1 para 8A(1)(a) (as added: see note 6 supra).
- 8 Ibid Sch 1 para 8A(1)(b) (as added: see note 6 supra).
- 9 Ibid Sch 1 para 8A(2)(a) (as added: see note 6 supra).
- 10 Ibid Sch 1 para 8A(2)(b) (as added: see note 6 supra).
- 11 Ibid Sch 1 para 8A(3) (as added: see note 6 supra).
- 12 Ibid Sch 1 para 8A(4) (as added: see note 6 supra).
- 13 Ie under ibid Sch 1 para 8A (as added): see Sch 1 para 8A(5) (as added: see note 6 supra).
- 14 Ibid Sch 1 para 8A(5) (as added: see note 6 supra). All references in Sch 1 para 8A (as added) to a period within which any step is required to be taken must be construed in accordance with the provision set out in the text: see Sch 1 para 8A(5) (as so added).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/579. Deposit of maps of pipelines with local authorities.

579. Deposit of maps of pipelines with local authorities.

A person to whom a pipeline construction authorisation¹ is granted must, forthwith² after the grant, deposit with each local authority³ within whose area lies any part of the route to be taken by the proposed pipeline, a copy on the same scale⁴ of so much of the map annexed to the authorisation as shows the part of that route that lies within that area⁵.

Such a person who fails to satisfy this obligation is guilty of an offence⁶.

1 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARAS 573-575 ante. As to the nature of the authorisation and the procedure for making modifications to it see PARA 576 ante. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

2 The expression 'forthwith' must be construed according to the circumstances in which it is used: see *Re Southam, ex p Lamb* (1881) 19 ChD 169 at 173, CA, per Jessel MR ('[i]t admits of no interval of time ... save such as may be imposed by circumstances which cannot be avoided').

3 For these purposes, 'local authority' means, in England, the council of a county, district or borough, and includes the Common Council of the City of London, and, in Wales, the council of a county or county borough: Pipe-lines Act 1962 s 35(6) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 21, Sch 18; the Local Authorities etc (Miscellaneous Provision) (No 2) Order 1974, SI 1974/595, art 3(22), Sch 1 Pt 1; and the Local Authorities etc (Miscellaneous Provision) (No 3) Order 1975, SI 1975/1636, art 4(4)). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to London boroughs and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 The scale of the map must be one of not less than 1 in 10,560: see the Pipe-lines Act 1962 s 1(3), Sch 1 para 7 (as amended); and PARA 573 ante.

5 Ibid s 35(1) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 12(a)). Documents deposited in pursuance of the Pipe-lines Act 1962 s 35 (as amended) with a local authority must be kept at the authority's offices and be open to inspection by any person at all reasonable hours free of charge: s 35(5). As to the exclusion of s 35 (as amended) see PARAS 563-564 ante.

6 See ibid s 35(4) (as amended); and PARA 620 post. As to penalties for providing false information and false documents see PARA 628 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/580. Notification of use and abandonment of pipelines.

580. Notification of use and abandonment of pipelines.

The owner¹ of a pipeline² must give to the Secretary of State³ notice⁴ of any of the following events within two weeks after the happening of the event⁵:

- 328 (1) the beginning of the use of a pipeline or of a length of a pipeline⁶;
- 329 (2) the abandonment of a pipeline or of a length of a pipeline⁷;
- 330 (3) the expiration of three years from the date on which a pipeline or a length of pipeline was last used⁸; and
- 331 (4) the resumption of the use of a pipeline or a length of a pipeline after the abandonment of the pipeline or length, or after the expiration of three years from the date on which it was last used⁹.

The notice must specify the date on which the event happened and the pipeline or length of pipeline in question, and if the owner fails to comply with these requirements, he is guilty of an offence¹⁰. However, where a pipeline or a length of pipeline is abandoned after the date on which the pipeline or length was last used but before the expiration of three years from the date, it is not necessary to give such notice¹¹ of expiration of that period¹².

1 For the meaning of 'owner' see PARA 557 note 7 ante.

2 For the meaning of 'pipeline' see PARA 559 ante. The Pipe-lines Act 1962 s 36 (as amended) applies only to pipelines constructed pursuant to a pipeline construction authorisation and to diversions to any such line: s 36(3) (added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 13). For the meaning of 'diversion' see PARA 573 note 5 ante; and see PARAS 585-587 post. For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

As to the exclusion of s 36 (as amended) see PARA 563 et seq ante. As to the prohibition on the use or testing of a pipeline unless funds are available to cover any damage caused by the release or escape of anything from the pipeline see s 26A (as added); and PARA 618 post. As to requirements relating to pipelines for the purposes of health and safety see the Pipelines Safety Regulations 1996, SI 1996/825 (as amended); and PARA 609 et seq post.

3 As to the Secretary of State see PARA 555 ante.

4 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante. As to penalties for furnishing false documents or giving false information see s 46 (as amended); and PARA 628 post.

5 See *ibid* s 36(1). For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

6 *Ibid* s 36(1)(a). As to references to the length of a pipeline see s 66(2): and PARA 559 ante.

7 *Ibid* s 36(1)(b).

8 *Ibid* s 36(1)(c).

9 *Ibid* s 36(1)(d).

10 See *ibid* s 36(1) (as amended); and PARA 621 post.

11 le under ibid s 36(1) (as amended): see s 36(2).

12 Ibid s 36(2).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(i) Cross-country Pipelines/581. Notification of change of ownership.

581. Notification of change of ownership.

Where a change occurs in the ownership of a pipeline¹, the owner² of the pipeline must within three weeks from the date³ on which the change occurs give to the Secretary of State⁴ and to every person who is an owner, lessee or occupier of land in⁵ which any part of the pipeline is situated (except a tenant for a month or any period less than a month), a notice⁶ stating the particulars of the change⁷.

A person who fails to satisfy an obligation to which he is subject by virtue of this provision is guilty of an offence⁸.

1 For the meaning of 'pipeline' see PARA 559 ante.

2 For the meaning of 'owner' see PARA 557 note 7 ante.

3 For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

4 As to the Secretary of State see PARA 555 ante.

5 For the meaning of 'in' in this context see PARA 562 note 8 ante. As to the meaning of 'land' see PARA 557 note 8 ante. As to references to the length of a pipeline see *ibid* s 66(2); and PARA 559 ante.

6 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante. As to penalties for furnishing false documents or giving false information see s 46 (as amended); and PARA 628 post.

7 *Ibid* s 38(1).

As to the exclusion of the Pipe-lines Act 1962 s 38 (as amended) see PARA 560 et seq ante.

8 See *ibid* s 38(2) (as amended); and PARA 622 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(ii) Local Pipelines/582. Power to treat local pipelines as cross-country pipelines.

(ii) Local Pipelines

582. Power to treat local pipelines as cross-country pipelines.

The Secretary of State¹ has power, exercisable by statutory instrument², by order to direct: (1) that the provisions relating to cross-country pipelines³ are to apply to works for the construction⁴ of local pipelines⁵ of a class specified in the order other than pipelines for whose construction works have lawfully been begun (or might lawfully have been begun) before the date on which the order comes into operation⁶; or (2) that the provisions relating to cross-country pipelines are to apply to the construction of local pipelines, where any part of their route lies within an area (or within an area of a class) specified in the order, other than pipelines for whose construction works have lawfully been begun (or might lawfully have been begun) before the date on which the order comes into operation⁷.

1 As to the Secretary of State see PARA 555 ante.

2 No order may be made under this provision unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament: Pipe-lines Act 1962 s 6(2). At the date at which this volume states the law, no such order had been made.

3 *le ibid* s 1 (as amended) (see PARA 573 ante): see s 6(1)(a) (as amended: see note 6 infra). For the meanings of 'cross-country pipeline' and 'pipeline' see PARA 559 ante.

4 As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

5 For the meaning of 'local pipeline' see PARA 559 ante.

6 Pipe-lines Act 1962 s 6(1)(a) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 1(4)).

7 Pipe-lines Act 1962 s 6(1)(b) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 1(4)).

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(iii) Unlawful Pipeline Works

583. Power of the Secretary of State to remove unlawful works.

Where pipeline¹ works have been unlawfully executed², the Secretary of State³ may serve on the person who executed them a notice⁴ requiring him to remove them⁵. If a person on whom such a notice is served fails, before the expiration of six weeks⁶ from the date on which the notice was served (or such longer period, not exceeding 12 months from that date, as the Secretary of State may on his application allow) to comply with the requirement imposed by the notice, the Secretary of State may enter and remove the works in question and may recover from the person in default, in any court of competent jurisdiction, the expenses he has reasonably incurred in removing them⁷. However, neither a person upon whom such a notice has been served, nor the Secretary of State, may enter or begin to remove any works in any land in exercise of this power without seeking consultation with every person specified for these purposes⁸.

Where, in consequence of compliance with a requirement to remove any works imposed by such a notice⁹ or of the exercise by the Secretary of State of his power to enter and remove any works¹⁰, a person (other than the person who executed the works) suffers loss by reason of damage to (or disturbance in the enjoyment of) any land or chattels, he is entitled to compensation in respect of that loss from the person who executed the works or (where the loss was suffered in consequence of the exercise of that power) to compensation in respect of that loss from the Secretary of State¹¹.

1 For the meaning of 'pipeline' see PARA 559 ante.

2 I.e. where works have been executed in land in contravention of the Pipe-lines Act 1962 s 1(1) (as amended) (see PARA 573 ante): s 4(1) (as amended: see note 5 infra). For the meaning of 'in' in this context see PARA 562 note 8 ante. As to the meaning of 'land' see PARA 557 note 8 ante. As to the exclusion of s 4 (as amended) see PARA 561 ante.

3 As to the Secretary of State see PARA 555 ante.

4 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante; and as to variation and revocation of requirements imposed by notice see PARA 555 note 4 ante.

5 Ibid s 4(1) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 1(2)). The service of a notice under the Pipe-lines Act 1962 s 4(1) (as amended) in consequence of a contravention of s 1(1) (as amended) (see PARA 573 ante) is without prejudice to the taking of proceedings under s 1(1) (as amended) in respect of which there is a contravention: s 4(5) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 1(3)). As to proceedings for offences under the Pipe-lines Act 1962 s 1(1) (as amended) see PARA 619 post. As to directions regarding deemed planning permission following service of a notice under s 4(1) (as amended) see PARA 584 post.

6 For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

7 Ibid s 4(2).

8 Ibid s 4(3) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, art 2, Schedule para 4(2)(a)). The persons specified for the purposes of the Pipe-lines

Act 1962 s 4(3) (as amended) are an owner, lessee, tenant (whatever the tenancy period) or occupier of the land, a person to whom the applicant would, if it were proceeding to purchase that land under the Compulsory Purchase Act 1965 s 5(1) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 616), be required to give notice to treat, or a person who the applicant thinks would be likely to be entitled to make a claim for compensation under the Compulsory Purchase Act 1965 s 10 (as amended) (compensation for injurious affection) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 718) if that land were purchased under a compulsory purchase order, so far as he is known to the applicant after making diligent inquiry: Pipe-lines Act 1962 s 4(3A) (added by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, Schedule para 4(2)(b)). For the meaning of 'owner' see PARA 557 note 7 ante.

9 le under the Pipe-lines Act 1962 s 4(1) (as amended) (see the text and notes 1-5 supra): see s 4(4).

10 le conferred by ibid s 4(2) (see the text and notes 6-7 supra): see s 4(4).

11 Ibid s 4(4). The Secretary of State may recover from the person who executed the works, in any court of competent jurisdiction, the amount of any compensation so paid by the Secretary of State: s 4(4). As to the determination of compensation questions under the Pipe-lines Act 1962 generally see PARA 556 ante.

Any compensation falling to be paid under the Pipe-lines Act 1962 in respect of damage to land that is ecclesiastical property (for the meaning of which see PARA 557 note 10 ante), to the extent to which it is payable to the fee simple owner, must be paid to the Diocesan Board of Finance for the diocese in which the land is situated, whether or not they are the fee simple owners, and any compensation payable in respect of the depreciation of the fee simple in such land must similarly be paid to it: see s 51(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 9(a), (c)). Sums so paid to the Diocesan Board of Finance for the diocese in which the land is situated with reference to consecrated land must be applied by it in such manner as it may determine, and sums paid to it with reference to unconsecrated land must be applied by it for the purposes for which the proceeds of a sale by agreement of the fee simple would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale: see the Pipe-lines Act 1962 s 51(5) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 9(a), (c), (d)). As to diocesan boards of finance see ECCLESIASTICAL LAW vol 14 paras 517-518; and as to the incumbent of a benefice see ECCLESIASTICAL LAW vol 14 para 541.

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(iv) Planning Permission

584. Directions as to planning permission.

Upon granting a pipeline construction authorisation¹, or upon serving a notice to remove works², the Secretary of State³ may direct that, in so far as the execution of the works authorised by (or by virtue of) the authorisation (or any change in the use of land⁴ which is involved in the execution of those works) constitutes development within the meaning of the Town and Country Planning Act 1990⁵ or, as the case may be, in so far as the removal of the works required by the notice to be removed (or any change in the use of land which is involved in the removal) constitutes such development, permission for that development is deemed to be granted under that Act⁶, subject to any conditions⁷ specified in the direction, being conditions of a kind that could have been imposed by the Secretary of State had the permission been granted by him on an application referred to him⁸.

1 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

2 I.e. a notice under ibid s 4(1) (as amended) (see PARA 583 ante); see s 5(1) (as amended: see note 8 infra). For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante; as to variation and revocation of requirements imposed by notice see PARA 555 note 4 ante; and as to penalties for sending false notices see PARA 628 post. As to the exclusion of s 5 (as amended) see PARA 561 ante.

3 As to the Secretary of State see PARA 555 ante.

4 As to the meaning of 'land' see PARA 557 note 8 ante.

5 For the meaning of 'development' see the Town and Country Planning Act 1990 s 55 (as amended); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217. However, for these purposes, the execution of works for the purpose of inspecting, maintaining, adjusting, repairing, altering or renewing a pipeline, including the breaking open of any street or other land for that purpose, is deemed not to involve the development of land: Pipe-lines Act 1962 s 5(2). As to the breaking-up of streets see further s 15 (as amended) (see PARA 590 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 401-404).

6 Planning permission is granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq): see the Pipe-lines Act 1962 s 5(1) (as amended: see note 8 infra).

7 In imposing such conditions the Secretary of State is to take into account the preservation of amenity: see PARA 591 post.

8 Pipe-lines Act 1962 s 5(1) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 2(3)). Applications for planning permission are referred to the Secretary of State under the Town and Country Planning Act 1990 s 77 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 483): see s 5(1) (as so amended).

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(v) Avoidance of Construction of Superfluous Pipelines

585. Construction of pipelines so as to reduce the need for others.

Where application is made to the Secretary of State¹ for the grant of a pipeline construction authorisation² for the construction of a pipeline to be designed for the conveyance of a particular kind of thing or of things of a particular class³, and he is satisfied:

- 332 (1) that there is evidence of demand existing or likely to arise for the grant of such authorisations for the construction of further pipelines to be designed for the conveyance of that kind of thing or, as the case may be, things of that class⁴; and
- 333 (2) that the routes to be taken by the further pipelines will each be, as to the whole or any part of the route, the same or substantially the same as the route or any part of the route to be taken by the pipeline to which the application relates⁵,

then, if he grants the application, he may grant it subject to the condition that the pipeline is to be constructed so as to be capable of conveying, during a specified period, not less than the specified quantity of the kind of thing in question or, as the case may be, things of the class in question⁶.

At any time, by notice⁷ served on the owner⁸ of a pipeline constructed pursuant to a pipeline construction authorisation to which such a condition is attached⁹, the Secretary of State may impose such requirements as he thinks necessary or expedient for all or any of the following specified purposes¹⁰, namely:

- 334 (a) to secure to persons other than the owner of the pipeline the right to have conveyed by it, or by any length of it specified in the pipeline construction authorisation, the kind of thing or, as the case may be, things of the class specified in the authorisation¹¹;
- 335 (b) to regulate the charges for the conveyance of the kind of thing or, as the case may be, things of the class specified in the authorisation, by the pipeline, or any length of it, on behalf of persons other than the owner¹²; and
- 336 (c) to secure that the exercise of a right secured under head (a) above is not prevented or impeded¹³.

Where a pipeline constructed pursuant to a pipeline construction authorisation to which a condition is attached under these provisions is constructed without conformity to that condition, the works for the construction of the pipeline are deemed¹⁴ to have been executed in contravention of the provisions relating to cross-country pipelines¹⁵.

If the owner of a pipeline fails to comply with a requirement imposed by a notice so served on him which imposes a condition regarding capacity with reference to that pipeline, he is guilty of an offence¹⁶.

¹ As to the Secretary of State see PARA 555 ante.

2 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

3 Ibid s 9(1)(a). As to the things which may and may not be conveyed in a pipeline see PARA 559 ante. The provisions of s 9 (as amended) do not apply where the application for the grant of a pipeline construction relates to the construction of a diversion: s 9(6) (added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 6). As to the continuance of certain conditions imposed and certain directions contained in notices after a pipeline is diverted see the Pipe-lines Act 1962 s 10A (as added and amended); and notes 6, 10 infra. For the meaning of 'diversion' see PARA 573 note 5 ante. As to the exclusion of s 9 (as amended) see PARA 561 et seq ante.

4 Ibid s 9(1)(b).

5 Ibid s 9(1)(c).

6 Ibid s 9(1). As to similar provision intended to secure that an additional pipeline is constructed in such a way as to reduce the necessity for the construction of other pipelines see s 9A (as added and amended); and PARA 586 post. A length of pipeline in respect of which any condition has been imposed under s 9(1), and which is to be diverted, is to continue for the purposes of and after the diversion to be subject to any condition contained in any such notice: s 10A(1) (s 10A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 9). This provision applies to a diversion which exceeds 16.093 kilometres as well as to a diversion which does not exceed that length: Pipe-lines Act 1962 s 10A(3) (as so added). As to the length of a pipeline see the Pipe-lines Act 1962 s 66(2); and PARA 559 ante.

Where a gas pipeline is proposed to be constructed pursuant to a pipeline construction authorisation to which a condition is attached by virtue of s 9(1), any person other than the applicant for the pipeline construction authorisation may make applications under s 10 (as amended) (see PARA 587 post) and, if applicable, s 10C (as added and amended) (see PARA 588 post) in respect of the proposed pipeline, and those sections have effect as if references to a pipeline were references to the pipeline as it would be once constructed in accordance with the condition, and as if references to the owner of the pipeline were references to the proposed owner of it: s 9(7) (s 9(7), (8) added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 1(3); the Pipe-lines Act 1962 s 9(7) amended by the Energy Act 2004 s 197(9), Sch 23 Pt 1). Where an upstream petroleum pipeline is proposed to be constructed pursuant to a pipeline construction authorisation to which a condition is attached by virtue of the Pipe-lines Act 1962 s 9(1), any person other than the applicant for the pipeline construction authorisation may make applications under s 10E (as added) (see PARA 589 post) in respect of the proposed pipeline, and s 10E and s 10F (as added) (see PARA 589 post) have effect as if references to a pipeline were references to the pipeline as it would be once constructed in accordance with the condition, and as if references to the owner of the pipeline were references to the proposed owner of it: s 9(8) (as so added). For the meaning of 'gas pipeline' see PARA 588 note 2 post; and for the meaning of 'upstream petroleum pipeline' see PARA 589 note 1 post.

Accordingly, s 9(2) (as amended) (see the text and notes 7-13 infra), s 9(3) (see note 10 infra) and s 9(5) (as amended) (see the text and note 16 infra) apply only to pipelines constructed pursuant to a pipeline construction authorisation which are neither upstream petroleum pipelines nor gas pipelines; and references in those subsections to 'pipeline' and 'line' are construed accordingly: s 9(1A) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 1(1); the Pipe-lines Act 1962 s 9(1A) amended by the Energy Act 2004 s 151(1)). As to certain gas pipelines see further PARA 588 post; and as to upstream petroleum pipelines see further PARA 589 post.

7 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante; and as to variation and revocation of requirements imposed by notice see PARA 555 note 4 ante.

8 For the meaning of 'owner' see PARA 557 note 7 ante.

9 Ie by virtue of the Pipe-lines Act 1962 s 9(1): see s 9(2) (as amended: see note 10 infra).

10 Ibid s 9(2) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 1(2)). A notice served under the Pipe-lines Act 1962 s 9(2) (as amended) with reference to a pipeline may authorise the owner of the pipeline to recover from persons to whom a right is secured by the notice under s 9(2)(a) (see head (a) in the text) payments of such amounts as may be determined in accordance with provisions contained in the notice, the payments being in consideration of the right being secured to those persons: s 9(3). A pipeline in respect of which any requirements have been imposed by virtue of a notice served under s 9(2) (as amended), and which is subsequently diverted, is to continue to be subject to such requirements after the diversion: s 10A(2) (s 10A as added (see note 6 supra); s 10A(2) amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 5). This provision applies to a diversion which exceeds 16.093 kilometres as well as to a diversion which does not exceed that length: Pipe-lines Act 1962 s 10A(3) (as so added).

11 Ibid s 9(2)(a). However, requirements imposed for this purpose must be so framed as to secure in the opinion of the Secretary of State that compliance with them will not prejudice the proper and efficient operation of the pipeline for the conveyance, on behalf of the owner thereof, in the quantity required by him, of the kind of thing, or things of the class, which the pipeline is designed to convey: s 9(2).

12 Ibid s 9(2)(b).

13 Ibid s 9(2)(c).

14 Ie for the purposes of ibid ss 1-8 (as amended) (see PARA 573 et seq ante): see s 9(4).

15 Ibid s 9(4). For the meaning of 'cross-country pipeline' see PARA 559 ante. As to proceedings for offences under s 1(1) (as amended) see PARA 619 post.

16 See ibid s 9(5) (as amended); and PARA 623 post.

UPDATE

585-589 Avoidance of Construction of Superfluous Pipelines

In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a 'pipe-line modification notice') to the applicant and the owner; the Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied (1) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or (2) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line: see Pipe-lines Act 1962 s 10G (ss 10G, 10H added by Energy Act 2008 s 79(2)). It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under the Pipe-lines Act 1962 s 10G in respect of the pipe-line: see Pipe-lines Act 1962 s 10H.

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586. Construction of additional pipelines so as to reduce the need for others.

Where application is made for the grant of planning permission¹ for the construction of an additional pipeline² to be designed for the conveyance of a particular kind of thing or of things of a particular class³, and the Secretary of State⁴ is satisfied:

- 337 (1) that there is evidence of demand existing or likely to arise for the grant of planning permission or for the grant of pipeline construction authorisations⁵ for the construction of further pipelines to be designed for the conveyance of that kind of thing or, as the case may be, things of that class⁶; and
- 338 (2) that the routes to be taken by the further pipelines will severably be, as to the whole or any part of the route, the same or substantially the same as the route or any part of the route to be taken by the pipeline to which the application relates⁷,

then, at any time before planning permission for the construction of the additional pipeline is granted, by notice⁸ served on the person who made the application for planning permission, the Secretary of State may direct that the pipeline to be constructed pursuant to the application or any length of that line specified in the notice is to be constructed so as to be capable of conveying, during a specified period, not less than the specified quantity of the kind of thing in question or, as the case may be, things of the class in question⁹.

At any time, by notice served on the owner¹⁰ of an additional pipeline in respect of which such a notice was served¹¹, the Secretary of State may impose such requirements as he thinks necessary or expedient for all or any of the following specified purposes¹², namely:

- 339 (a) to secure to persons other than the owner of the pipeline the right to have conveyed by it or, as the case may be, by any length of it specified in the notice, the kind of thing (or, as the case may be, things of the class) specified in the notice¹³;
- 340 (b) to regulate the charges to be made for the conveyance by the pipeline (or, as the case may be, by that length of it) on behalf of persons other than the owner of that kind of thing or, as the case may be, things of that class¹⁴; and
- 341 (c) to secure that the exercise of a right secured by virtue of head (a) above is not prevented or impeded¹⁵.

Where an additional pipeline in respect of which such a notice was served is constructed without conformity to that notice, the works for the construction of the pipeline are deemed¹⁶ to have been executed in contravention of the provisions relating to cross-country pipelines¹⁷.

If the owner of a pipeline fails to comply with a requirement imposed by a notice so served on him with reference to that additional pipeline, he is guilty of an offence¹⁸.

1 For these purposes, 'planning permission' means permission granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq): Pipe-lines Act 1962 s 9A(6) (s 9A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 7).

2 For these purposes, 'additional pipeline' means a pipeline (other than a diversion) which is of a length not exceeding 16.093 kilometres and is to form an addition to another pipeline (if the aggregate of the lengths of both exceeds 16.093 kilometres) or which is of a length not exceeding 16.093 kilometres and is to be constructed so as to connect two or more other pipelines (if the aggregate of the lengths of the line and of those connected thereby exceeds 16.093 kilometres): Pipe-lines Act 1962 s 66(1) (definition added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 15(a)). For the meaning of 'pipeline' see PARA 559 ante. For the meaning of 'diversion' see PARA 573 note 5 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante. As to the length of a pipeline see the Pipe-lines Act 1962 s 66(2); and PARA 559 ante.

3 Ibid s 9A(1)(a) (as added: see note 1 supra). As to the things which may and may not be conveyed in a pipeline see PARA 559 ante. As to the exclusion of s 9A (as added and amended) see PARA 560 ante.

4 As to the Secretary of State see PARA 555 ante.

5 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante.

6 Ibid s 9A(1)(b) (as added: see note 1 supra).

7 Ibid s 9A(1)(c) (as added: see note 1 supra).

8 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante; and as to variation and revocation of requirements imposed by notice see PARA 555 note 4 ante.

9 Pipe-lines Act 1962 s 9A(1) (as added: see note 1 supra). As to similar provision intended to secure that a pipeline is constructed in such a way as to reduce the necessity for the construction of other pipelines see s 9 (as amended); and PARA 585 ante. A length of pipeline in respect of which a notice has been served under s 9A(1) (as added), and which is to be diverted, is to continue for the purposes of and after the diversion to be subject to any direction contained in any such notice: s 10A(1) (s 10A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 9). This provision applies to a diversion which exceeds 16.093 kilometres as well as to a diversion which does not exceed that length: Pipe-lines Act 1962 s 10A(3) (as so added). As to the length of a pipeline see s 66(2); and PARA 559 ante.

Where a gas pipeline which is an additional pipeline is proposed to be constructed and the Secretary of State has served a notice in respect of the pipeline under s 9A(1) (as added) on the person who made the application for planning permission, any person other than the applicant may make applications under s 10 (as amended) (see PARA 587 post) and, if applicable, s 10C (as added and amended) (see PARA 588 post) in respect of the proposed pipeline, and those sections have effect as if references to a pipeline were references to the pipeline as it would be once constructed in accordance with the condition, and as if references to the owner of the pipeline were references to the proposed owner of it: s 9A(7) (s 9A as so added, s 9A(7), (8) added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 2(2); the Pipe-lines Act 1962 s 9A(7) amended by the Energy Act 2004 s 197(9), Sch 23 Pt 1). Where an upstream petroleum pipeline which is an additional pipeline is proposed to be constructed and the Secretary of State has served a notice in respect of the pipeline under the Pipe-lines Act 1962 s 9A(1) (as added) on the person who made the application for planning permission, any person other than the applicant may make applications under s 10E (as added) (see PARA 589 post) in respect of the proposed pipeline, and s 10E and s 10F (as added) (see PARA 589 post) have effect as if references to a pipeline were references to the pipeline as it would be once constructed in accordance with the notice, and as if references to the owner of the pipeline were references to the proposed owner of it: s 9A(8) (as so added).

Accordingly, s 9A(2) (as added) (see the text and notes 10-15 infra), s 9A(3) (as added) (see note 12 infra) and s 9A(5) (as added) (see the text and note 18 infra) apply only to additional pipelines which are not an upstream petroleum pipeline, a gas pipeline or a gas interconnector; and references in those subsections to 'pipeline' and 'line' are construed accordingly: s 9A(1A) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 2(1); the Pipe-lines Act 1962 s 9A(1A) amended by the Energy Act 2004 s 151(1)). For the meaning of 'gas interconnector' for these purposes see the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 792); Pipe-lines Act 1962 s 66(1) (definition added by the Energy Act 2004 s 151(4)(b)). For the meaning of 'gas pipeline' see PARA 588 note 2 post; and for the meaning of 'upstream petroleum pipeline' see PARA 589 note 1 post. As to certain gas pipelines see further PARA 588 post; and as to upstream petroleum pipelines see further PARA 589 post.

10 For the meaning of 'owner' see PARA 557 note 7 ante.

11 Ie by virtue of the Pipe-lines Act 1962 s 9A(1) (as added): see s 9A(2) (as added: see note 1 supra).

12 Ibid s 9A(2) (as added: see note 1 supra). A notice served under s 9A(2) (as added) with reference to an additional pipeline may authorise the owner of the pipeline to recover from persons to whom a right is secured by the notice under s 9A(2)(a) (as added) (see head (a) in the text) payments of such amounts as may be determined in accordance with provisions contained in the notice, the payments being in consideration of the right being secured to those persons: s 9A(3) (as so added). A pipeline in respect of which any requirements have been imposed by virtue of a notice served under s 9A(2) (as added), and which is subsequently diverted, is to continue to be subject to such requirements after the diversion: s 10A(2) (s 10A as added (see note 9 supra); s 10A(2) amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 5). This provision applies to a diversion which exceeds 16.093 kilometres as well as to a diversion which does not exceed that length: Pipe-lines Act 1962 s 10A(3) (as so added).

13 Ibid s 9A(2)(a) (as added: see note 1 supra). However, requirements imposed for this purpose must be so framed as to secure in the opinion of the Secretary of State that compliance with them will not prejudice the proper and efficient operation of the pipeline for the conveyance, on behalf of the owner thereof, in the quantity required by him, of the kind of thing, or things of the class, which the pipeline is designed to convey: s 9A(2) (as so added).

14 Ibid s 9A(2)(b) (as added: see note 1 supra).

15 Ibid s 9A(2)(c) (as added: see note 1 supra).

16 Ie for the purposes of ibid ss 1-8 (as amended) (see PARA 573 et seq ante): see s 9A(4) (as added: see note 1 supra).

17 Ibid s 9A(4) (as added: see note 1 supra). The text refers to deemed contravention of s 1(1) (as amended) (see PARA 573 ante): see s 9A(4) (as so added). For the meaning of 'cross-country pipeline' see PARA 559 ante. As to proceedings for offences under s 1(1) (as amended) see PARA 619 post.

18 See ibid s 9A(5) (as added); and PARA 623 post.

UPDATE

585-589 Avoidance of Construction of Superfluous Pipelines

In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a 'pipe-line modification notice') to the applicant and the owner; the Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied (1) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or (2) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line: see Pipe-lines Act 1962 s 10G (ss 10G, 10H added by Energy Act 2008 s 79(2)). It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under the Pipe-lines Act 1962 s 10G in respect of the pipe-line: see Pipe-lines Act 1962 s 10H.

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587. Use of pipelines so as to reduce the need for others.

An application with respect to: (1) a gas pipeline¹; or (2) any pipeline other than a gas pipeline which is constructed² pursuant to a pipeline construction authorisation³ and is neither comprised in a gas interconnector⁴ nor an upstream petroleum pipeline⁵, may be made to the Secretary of State⁶ by any person (other than the owner⁷ of the pipeline) who seeks to have conveyed by the pipeline on his behalf a particular kind of thing or things of a particular class⁸, being, as the case may be, the kind of thing or things of the class which the pipeline is designed to convey⁹. Where such an application is made, the Secretary of State must serve¹⁰ on the owner¹¹ of the pipeline and the applicant notice¹² of the time¹³ at which the question of conferring on the applicant the right sought by him will be considered by the Secretary of State; and the owner and the applicant are entitled to be heard when the question is considered¹⁴.

If after taking this question into consideration the Secretary of State is satisfied, without prejudice to the proper and efficient operation of the pipeline for the conveyance on behalf of its owner, in the quantity required by him, of the kind of thing or things of the class which the pipeline is designed to convey, that it could be operated so as to permit the conveyance on behalf of the applicant of the kind of thing or things for which the applicant seeks the right to convey, he must make a declaration that he is so satisfied¹⁵.

Where the Secretary of State makes such a declaration with respect to a pipeline, he may impose by notice served on the pipeline owner such requirements as he thinks necessary or expedient for all or any of the following purposes¹⁶:

- 342 (a) to secure to the person whose application resulted in the making of the declaration the right to have conveyed by the pipeline the kind of thing to which the application related or, as the case may be, things of the class to which it related¹⁷;
- 343 (b) to regulate the charges to be made for the conveyance by the pipeline on behalf of the person whose application resulted in the making of the declaration of the kind of thing or, as the case may be, things of the class to which the application related¹⁸; and
- 344 (c) to secure that the exercise of a right secured by virtue of head (a) above is not prevented or impeded¹⁹.

If the owner of a pipeline fails to comply with a requirement imposed by a notice served on him under these provisions with reference to the pipeline, he is guilty of an offence²⁰.

1 Pipe-lines Act 1962 s 10(1)(a) (s 10(1) amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 3). As to applications made with respect to certain gas pipelines see further PARA 588 post. For the meaning of 'gas pipeline' see PARA 588 note 2 post. For the meaning of 'pipeline' see PARA 559 ante. As to the exclusion of the Pipe-lines Act 1962 s 10 (as amended) see PARA 561 et seq ante.

2 As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

3 Pipe-lines Act 1962 s 10(1)(b)(i) (as amended: see note 1 supra). For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante.

An additional pipeline other than a gas pipeline is to be treated as a pipeline constructed pursuant to a pipeline construction authorisation for the purposes of s 10 (as amended): s 10(7) (s 10(7), (8) added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 8; the Pipe-lines Act 1962 s 10(7) amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 4). Any diversion to a pipeline constructed pursuant to a pipeline construction authorisation (or treated as so constructed) must be treated as part of that pipeline for the purposes of the Pipe-lines Act 1962 s 10 (as amended): s 10(8) (as so added). Accordingly, a diversion which required such an authorisation will be treated for those purposes as constructed pursuant to the pipeline construction authorisation of the pipeline it is diverting: s 10(8) (as so added). For the meaning of 'additional pipeline' see PARA 586 note 2 ante. For the meaning of 'diversion' for these purposes see PARA 573 note 5 ante.

4 For the meaning of 'gas interconnector' see PARA 586 note 9 ante.

5 Pipe-lines Act 1962 s 10(1)(b)(ii) (as amended (see note 1 supra); s 10(1)(b)(ii) further amended by the Energy Act 2004 s 151(2)). As to applications made with respect to upstream petroleum pipelines see further PARA 589 post. For the meaning of 'upstream petroleum pipeline' see PARA 589 note 1 post.

6 le subject to the Pipe-lines Act 1962 s 10C (as added and amended) (see PARA 588 post) in the case of a gas pipeline to which that section applies: see s 10(1) (as amended: see note 1 supra). As to the Secretary of State see PARA 555 ante.

7 For the meaning of 'owner' see PARA 557 note 7 ante; but see note 11 infra also.

8 As to the things which may or may not be conveyed by a pipeline see the Pipe-lines Act 1962 s 65 (as amended); and PARA 559 ante.

9 Ibid s 10(1) (as amended: see note 1 supra).

10 As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

11 For the purposes of the Pipe-lines Act 1962 s 10 (as amended) in the case of gas pipelines only, other than s 10(1) (as amended) (see the text and notes 1-9 supra) the definition of 'owner' (see note 7 supra) includes a person who has the right to use capacity in the pipeline, where such right has been acquired by that person on terms that he is entitled to use the capacity for a period of one year or more and the right is capable of being assigned or otherwise disposed of to another person: s 66(1) (definition amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 9(c)).

12 For the meaning of 'notice' see PARA 555 note 4 ante.

13 The time at which the question will be considered must be not less than 21 days from the date of the service of the notice: Pipe-lines Act 1962 s 10(2). For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

14 Ibid s 10(2). As to general provisions as to hearings see PARA 602 post.

15 Ibid s 10(3).

16 Ibid s 10(4). A notice served under s 10(4) with reference to a pipeline may authorise the owner of the pipeline to recover, from persons to whom a right is secured by the notice by virtue of s 10(4)(a) (see head (a) in the text), payments of such amounts as may be determined in accordance with provisions contained in the notice, the payments being in consideration of the right under s 10(4)(a) being secured to them: s 10(5). A pipeline in respect of which any requirements have been imposed by virtue of a notice served under s 10(4), and which is subsequently diverted, is to continue to be subject to such requirements after the diversion: s 10A(2) (s 10A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 9; the Pipe-lines Act 1962 s 10A(2) amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 5). This provision applies to a diversion which exceeds 16.093 kilometres as well as to a diversion which does not exceed that length: Pipe-lines Act 1962 s 10A(3) (as so added).

17 Ibid s 10(4)(a). However, requirements imposed for this purpose must be so framed as to secure, in the opinion of the Secretary of State, that compliance with them will not prejudice the proper and efficient operation of the pipeline for the purpose mentioned in s 10(3) (see the text and note 15 supra): see s 10(4).

18 Ibid s 10(4)(b).

19 Ibid s 10(4)(c).

20 See ibid s 10(6) (as amended); and PARA 623 post.

UPDATE**585-589 Avoidance of Construction of Superfluous Pipelines**

In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a 'pipe-line modification notice') to the applicant and the owner; the Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied (1) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or (2) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line: see Pipe-lines Act 1962 s 10G (ss 10G, 10H added by Energy Act 2008 s 79(2)). It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under the Pipe-lines Act 1962 s 10G in respect of the pipe-line: see Pipe-lines Act 1962 s 10H.

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588. Construction of certain gas pipelines so as to reduce the need for others.

The owner¹ of a gas pipeline² must publish at least once in every year³ the main commercial conditions⁴ relating to the grant to another person of a right to have gas conveyed in the pipeline on that person's behalf⁵.

Any person who seeks a right to have gas conveyed on his behalf in a gas pipeline (the 'applicant') must, before making an application to the Secretary of State⁶, apply to the owner of the pipeline by giving him notice of what is being sought⁷. Such a notice must, in particular, specify the kind of gas to be conveyed (which must be of the kind the pipeline is designed to convey) and the quantities of gas to be conveyed⁸; and, where an applicant gives such notice, he and the owner of the pipeline must negotiate in good faith and endeavour to reach agreement on the application⁹. If the owner and the applicant do not reach any such agreement, the applicant may make an application to the Secretary of State¹⁰ with respect to the pipeline¹¹. However, the Secretary of State must not entertain such an application unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties to negotiate in good faith and to endeavour to reach agreement on the application¹². For the purpose of considering such an application¹³ with respect to a gas pipeline, the Secretary of State may by notice require the owner or the applicant to provide him with such financial information relating to the owner's or applicant's activities with respect to gas pipelines as he may specify or describe in the notice¹⁴.

1 For the purposes of the Pipe-lines Act 1962 ss 10C-10D (as added and amended), the definition of 'owner' (as to which see PARA 557 note 7 ante) includes a person who has the right to use capacity in the pipeline, where such right has been acquired by that person on terms that he is entitled to use the capacity for a period of one year or more and the right is capable of being assigned or otherwise disposed of to another person: s 66(1) (definition amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 9(c)). For the meaning of 'pipeline' see PARA 559 ante.

2 For these purposes, 'gas pipeline' means a pipeline used to convey gas to premises, or to a pipeline system operated by a gas transporter (within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805)), which is a pipeline in respect of which an exemption has been granted by or under that Act from the requirement for a gas transporter's licence and which is not comprised in an upstream petroleum pipeline: Pipe-lines Act 1962 s 66(1) (definition substituted by the Energy Act 2004 s 151(4)(a)). For the meaning of 'gas' see PARA 559 note 18 ante. For the meaning of 'upstream petroleum pipeline' see PARA 589 note 1 post.

3 For this purpose, 'year' means any year ending with 9 August: Pipe-lines Act 1962 s 10C(2) (ss 10C, 10D added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 6).

4 For this purpose, 'main commercial conditions' means such information as would enable a potential applicant for a right to have gas conveyed in a gas pipeline to make a reasonable assessment of the cost of (or the method of calculating the cost of) acquiring that right, the other significant terms on which such a right would be granted and such other information as the Secretary of State may from time to time specify by notice: Pipe-lines Act 1962 s 10C(11) (s 10C as added (see note 3 supra); s 10C(11) amended by the Energy Act 2004 ss 151(3)(c), 197(9), Sch 23 Pt 1). For the meaning of 'notice' see PARA 555 note 4 ante. As to the Secretary of State see PARA 555 ante.

5 Pipe-lines Act 1962 s 10C(1) (s 10C as added (see note 3 supra); s 10C(1), (3)-(4) amended by the Energy Act 2004 s 151(3)(c), Sch 23 Pt 1). The owner of a gas pipeline must also publish any changes to the published conditions as soon as they become effective: see the Pipe-lines Act 1962 s 10C(1) (as so added and amended). He also must ensure that the conditions which he is required to publish under s 10C(1) (as added and amended) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or

descriptions of potential applicants, for a right to have gas conveyed in the pipeline: s 10C(3) (as so added and amended). Compliance with the duties in s 10C(1), (3) (as added and amended) are enforceable by civil proceedings by the Secretary of State for an injunction or other appropriate relief or remedy: s 10D(4) (as added: see note 3 supra).

6 Ibid under ibid s 10 (as amended) (see PARA 587 ante): see s 10C(4) (as added and amended: see note 5 supra).

7 Ibid s 10C(4) (as added and amended: see note 5 supra).

8 Ibid s 10C(5) (as added: see note 3 supra).

9 Ibid s 10C(6) (as added: see note 3 supra). The duty in s 10C(6) (as added) is a duty owed to any person who may be affected by a failure to comply with it: s 10D(1) (as added: see note 3 supra). Where a duty is owed by virtue of s 10D(1) (as added) to any person, any breach of the duty which causes that person to sustain loss or damage is to be actionable at the suit or instance of that person: s 10D(2) (as so added). In any proceedings brought against a person in pursuance of s 10D(2) (as added), it is a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty: s 10D(3) (as so added).

10 Ibid under ibid s 10 (as amended) (see PARA 587 ante): see s 10C(7) (as added: see note 3 supra).

11 Ibid s 10C(7) (as added: see note 3 supra).

12 Ibid s 10C(8) (as added: see note 3 supra). The text refers to the parties' duties under s 10(6) (as added) (see the text and note 9 supra): see s 10C(8) (as added: see note 3 supra).

13 Ibid under ibid s 10 (as amended) (see PARA 587 ante): see s 10C(9) (as added and amended: see note 14 infra).

14 Ibid s 10C(9) (s 10C as added (see note 3 supra); s 10C(9) amended by the Energy Act 2004 s 151(3)(c), Sch 23 Pt 1). The Secretary of State is not to disclose to any person information obtained under the Pipe-lines Act 1962 s 10C(9) (as added and amended) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment: s 10C(10) (as so added).

UPDATE

585-589 Avoidance of Construction of Superfluous Pipelines

In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a 'pipe-line modification notice') to the applicant and the owner; the Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied (1) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or (2) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line: see Pipe-lines Act 1962 s 10G (ss 10G, 10H added by Energy Act 2008 s 79(2)). It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under the Pipe-lines Act 1962 s 10G in respect of the pipe-line: see Pipe-lines Act 1962 s 10H.

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589. Use of upstream petroleum pipelines so as to reduce the need for others.

Any person who seeks a right to have things conveyed by an upstream petroleum pipeline¹ of which he is not the owner² (the 'applicant') must, before making an application to the Secretary of State³, apply to the owner⁴ of the pipeline for the right⁵. Such an application must be made by giving notice⁶ to the owner specifying what is being sought⁷; and such a notice must, in particular, specify the kind of things to be conveyed (which must be of a kind the pipeline is designed to convey) and the quantities to be conveyed⁸.

If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for a notice⁹ securing to the applicant the right to have conveyed by the pipeline in respect of which he has made an application to the owner¹⁰ the quantities specified in the relevant notice¹¹ of things of a kind so specified¹². However, the Secretary of State must not entertain such an application unless he is satisfied that the parties have had a reasonable time in which to reach agreement between themselves on the application made to the owner¹³. Where a person so applies to the Secretary of State¹⁴ and the Secretary of State is satisfied as to the time allowed to the parties to reach agreement¹⁵, the Secretary of State must serve on the owner of the pipeline and the applicant notice of the time¹⁶ at which the question of conferring on the applicant the right sought by him is to be considered by the Secretary of State, and the owner and the applicant are entitled to be heard when that question is so considered¹⁷.

When considering the application, the Secretary of State must (so far as relevant) take into account:

- 345 (1) capacity which is or can reasonably be made available in the pipeline in question¹⁸;
- 346 (2) any incompatibilities of technical specification which cannot reasonably be overcome¹⁹;
- 347 (3) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum²⁰;
- 348 (4) the owner's reasonable needs for the transport and processing of petroleum²¹;
- 349 (5) the interests of all users and operators of the pipeline²²;
- 350 (6) the need to maintain security and regularity of supplies of petroleum²³; and
- 351 (7) the number of parties involved in the dispute²⁴.

Where the Secretary of State is satisfied that, if he served a notice in relation to the use of an upstream petroleum pipeline²⁵, the pipeline in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of conveying, on behalf of its owner, the quantities of things which the owner requires or may reasonably be expected to require, the Secretary of State may serve such a notice on the owner and the applicant²⁶. Such a notice may contain such provisions as the Secretary of State considers appropriate for any of the following purposes²⁷, namely:

- 352 (a) to secure to the applicant the right to have conveyed by the pipeline the quantities specified in the notice²⁸ of the things of a kind so specified²⁹;

- 353 (b) to secure that the exercise of the right is not prevented or impeded³⁰;
- 354 (c) to regulate the charges which may be made for the conveyance of things by virtue of the right³¹; and
- 355 (d) to secure to the applicant the right to have a pipeline of his connected to the pipeline by the applicant or owner³².

Such a notice³³ may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in head (a) or head (d) above of amounts specified in the notice or determined in accordance with the notice³⁴.

1 The Pipe-lines Act 1962 s 10E (as added) applies to upstream petroleum pipelines only: see s 10E(1) (ss 10E-10F added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 6). For these purposes, 'upstream petroleum pipeline' means a pipeline or one of a network of pipelines operated or constructed as part of a petroleum production project or used to convey petroleum from the site of one or more such projects: (1) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process; (2) directly to a terminal; or (3) indirectly to a terminal by way of one or more other terminals (whether or not such intermediate terminals are of the same kind as the final terminal) where 'terminal' includes: (a) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids; (b) gas processing facilities; and (c) a facility for the reception of gas prior to its conveyance to a place outside Great Britain: Pipe-lines Act 1962 s 66(1) (definitions added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 9(e)). 'Gas processing facility' means any facility in Great Britain operated otherwise than by a gas transporter (within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805)) which carries out gas processing operations, where 'gas processing operation' means any of the following operations, namely: (i) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter (within the meaning of the Gas Act 1986 Pt I (as amended)) or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain; (ii) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and (iii) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person: Pipe-lines Act 1962 s 66(1) (definitions added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 9(a)). 'Petroleum production project' means a project carried out by virtue of a licence granted under the Petroleum Act 1998 s 3 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1639) or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas: Pipe-lines Act 1962 s 66(1) (definition added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 9(d)). 'Foreign sector of the continental shelf' means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom: Pipe-lines Act 1962 s 66(1) (definition added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 9(a)). For the meanings of 'gas' and 'petroleum' see PARA 559 note 18 ante. For the meaning of 'Great Britain' see PARA 29 note 3 ante. For the meaning of 'pipeline' see PARA 559 ante. For the meaning of 'United Kingdom' see PARA 31 note 2 ante.

2 For the meaning of 'owner' see PARA 557 note 7 ante; but see note 4 infra also.

3 Ie under the Pipe-lines Act 1962 s 10E(5) (as added) (see the text and notes 9-12 infra): see s 10E(2) (as added: see note 1 supra).

4 For the purposes of ibid ss 10E-10F (as added), other than the first reference in s 10E(2) (as added) (see note 2 supra), the definition of 'owner' includes a person who has the right to use capacity in the pipeline, where such right has been acquired by that person on terms that he is entitled to use the capacity for a period of one year or more and the right is capable of being assigned or otherwise disposed of to another person: s 66(1) (definition amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 9(c)).

5 Pipe-lines Act 1962 s 10E(2) (as added: see note 1 supra).

6 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

7 Pipe-lines Act 1962 s 10E(3) (as added: see note 1 supra).

8 Ibid s 10E(4) (as added: see note 1 supra). As to the variation and revocation of requirements imposed by notice see PARA 555 ante.

9 le under ibid s 10E(9) (as added) (see the text and notes 25-26 infra): see s 10E(5) (as added: see note 1 supra).

10 le under ibid s 10E(2) (as added) (see the text and notes 1-5 supra): see s 10E(5) (as added: see note 1 supra).

11 le under ibid s 10E(3) (as added) (see the text and notes 6-7 supra): see s 10E(5) (as added: see note 1 supra).

12 Ibid s 10E(5) (as added: see note 1 supra). For the purpose of considering an application under s 10E(5) (as added), the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice: s 10F(1) (as added: see note 1 supra). The information mentioned in s 10F(1) (as added) may, in particular, include financial information relevant to the owner's or the applicant's activities with respect to petroleum production projects and upstream petroleum pipelines: s 10F(2) (as so added). The Secretary of State must not disclose to any person any information obtained under s 10F(1) (as added) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment: s 10F(3) (as so added).

13 Ibid s 10E(6) (as added: see note 1 supra). The text refers to the application made under s 10E(2) (as added) (see the text and notes 1-5 supra): see s 10E(6) (as added: see note 1 supra).

14 le under ibid s 10E(5) (as added) (see the text and notes 9-12 supra): see s 10E(7) (as added: see note 1 supra).

15 le as mentioned in ibid s 10E(6) (as added) (see the text and note 13 supra): see s 10E(7) (as added: see note 1 supra).

16 le being some time not less than 21 days from the date of the service of the notice: see ibid s 10E(7) (as added: see note 1 supra). For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

17 Ibid s 10E(7) (as added: see note 1 supra).

18 Ibid s 10E(8)(a) (as added: see note 1 supra).

19 Ibid s 10E(8)(b) (as added: see note 1 supra).

20 Ibid s 10E(8)(c) (as added: see note 1 supra).

21 Ibid s 10E(8)(d) (as added: see note 1 supra).

22 Ibid s 10E(8)(e) (as added: see note 1 supra).

23 Ibid s 10E(8)(f) (as added: see note 1 supra).

24 Ibid s 10E(8)(g) (as added: see note 1 supra).

25 le under ibid s 10E (as added): see s 10E(9) (as added: see note 1 supra).

26 Ibid s 10E(9) (as added: see note 1 supra). If the owner of a pipeline fails to comply with a requirement imposed by a notice served under s 10E(9) (as added) with reference to the pipeline he is guilty of an offence: see s 10F(4) (as added); and PARA 623 post.

A pipeline in respect of which any requirements have been imposed by virtue of a notice served under s 10E(9) (as added), and which is subsequently diverted, is to continue to be subject to such requirements after the diversion: s 10A(2) (s 10A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 9; the Pipe-lines Act 1962 s 10A(2) amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 5). This provision applies to a diversion which exceeds 16.093 kilometres as well as to a diversion which does not exceed that length: Pipe-lines Act 1962 s 10A(3) (as so added).

27 Ibid s 10E(10) (as added: see note 1 supra).

28 le the notice under ibid s 10E(3) (as added) (see the text and notes 6-7 supra): see s 10E(10)(a) (as added: see note 1 supra).

29 Ibid s 10E(10)(a) (as added: see note 1 supra).

30 Ibid s 10E(10)(b) (as added: see note 1 supra).

31 Ibid s 10E(10)(c) (as added: see note 1 supra).

32 Ibid s 10E(10)(d) (as added: see note 1 supra).

33 Ie a notice under ibid s 10E(9) (as added) (see the text and notes 25-26 supra): see s 10E(11) (as added: see note 1 supra).

34 Ibid s 10E(11) (as added: see note 1 supra).

UPDATE

585-589 Avoidance of Construction of Superfluous Pipelines

In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a 'pipe-line modification notice') to the applicant and the owner; the Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied (1) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or (2) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line: see Pipe-lines Act 1962 s 10G (ss 10G, 10H added by Energy Act 2008 s 79(2)). It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under the Pipe-lines Act 1962 s 10G in respect of the pipe-line: see Pipe-lines Act 1962 s 10H.

589 Use of upstream petroleum pipelines so as to reduce the need for others

NOTE 1--Pipe-lines Act 1962 s 10E(1) amended: Energy Act 2008 s 79(3). Definitions of 'upstream petroleum pipe-line', 'terminal' and 'gas processing operation' in Pipe-lines Act 1962 s 66(1) amended: Energy Act 2008 s 78(1), Sch 6.

NOTE 12--See also Pipe-lines Act 1962 s 10F(5) (added by Energy Act 2008 s 79(4)).

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(vi) Pipelines in Streets

590. Power to place pipelines in streets.

The Pipe-lines Act 1962 confers a power on any person to place a pipeline¹ in a street with the consent of the appropriate authority for that street². This power is covered elsewhere in this work³.

1 For the meaning of 'pipeline' see PARA 559 ante.

2 See the Pipe-lines Act 1962 s 15(1) (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 401 et seq. The power under s 15 (as amended) is exercisable in relation to Wales by the Welsh Ministers: see PARA 555 ante.

3 As to works under ibid s 15 (as amended) and s 16 (as substituted) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 401 et seq.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(vii) Preservation of Amenity and Avoidance of Obstruction and Interference/591. Preservation of amenity and protection of water.

(vii) Preservation of Amenity and Avoidance of Obstruction and Interference

591. Preservation of amenity and protection of water.

Where a person is formulating proposals for the execution of pipeline works¹ or where the Secretary of State² is considering such proposals (whether in relation to the grant of a pipeline construction authorisation³ or to the imposition of conditions⁴ on his granting such authorisation)⁵ certain matters must be taken into account⁶. Having regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographic features of special interest, and of protected buildings and other objects of architectural or historic interest, the person formulating proposals or the Secretary of State, as the case may be, must take into account any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, buildings or objects, and in so doing must have particular regard to the desirability of ensuring that things constructed in the course of the execution of the proposed works are kept below ground so far as that is practicable⁷.

In order to determine whether and how to exercise any of his powers under the Pipe-lines Act 1962, the Secretary of State must have constant regard to the need to avoid the pollution of any water, whether on the surface or underground, belonging to any statutory water undertakers⁸, or which they are for the time being authorised to take⁹.

Nothing in the Pipe-lines Act 1962 or in a compulsory rights order¹⁰ exonerates a person from any action or other proceedings for nuisance¹¹.

1 Pipe-lines Act 1962 s 43(a). For the meaning of 'pipeline works' see PARA 561 note 12 ante; and for the meaning of 'pipeline' see PARA 559 ante.

2 As to the Secretary of State see PARA 555 ante.

3 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

4 Ie under ibid s 5 (as amended) (see PARA 584 ante): see s 43(b) (as amended: see note 5 infra).

5 Ibid s 43(b) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 2(4)).

6 Ie the matters set out in the Pipe-lines Act 1962 s 43 (see the text and note 7 infra): see s 43.

7 Ibid s 43.

8 For these purposes, 'statutory water undertakers' means the Environment Agency or a water undertaker: ibid s 66(1) (definition substituted by the Water Act 1989 s 190, Sch 25 para 50; and amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and see WATER AND WATERWAYS vol 100 (2009) PARAS 17, 191 et seq.

9 Pipe-lines Act 1962 s 44. As to the corresponding Scottish authorities see s 44 (amended by the Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004, SI 2004/1822, art 2, Schedule Pt 1 para 3(1), (3)).

- 10 For the meaning of 'compulsory rights order' see PARA 597 post.
- 11 Pipe-lines Act 1962 s 69.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(vii) Preservation of Amenity and Avoidance of Obstruction and Interference/592. Obligation to restore agricultural land.

592. Obligation to restore agricultural land.

A person executing pipeline works¹ in agricultural land² must secure, so far as is practicable, that upon the completion of the works the land is so restored as to be fit for use for the purpose for which it was used immediately before the execution of the works was begun³.

If the person executing the works fails to satisfy this obligation, a person entitled to an interest in the land may, if he himself restores the land, recover from that person in any court of competent jurisdiction the expenses reasonably incurred by him in so doing⁴.

1 For the meaning of 'pipeline works' see PARA 561 note 12 ante; and for the meaning of 'pipeline' see PARA 559 ante.

2 As to the meaning of 'agricultural' see PARA 559 note 8 ante; and as to the meaning of 'land' see PARA 557 note 8 ante.

3 Pipe-lines Act 1962 s 45(1). As to the exclusion of s 45 see PARA 560 ante.

4 Ibid s 45(2). The right of recovery conferred by s 45(2) on a person entitled to an interest in land in the case of the failure by the person who executed the works to restore the land, is an alternative to any right to compensation under ss 1-44 (as amended) in respect of loss suffered by that person by reason of damage to the land in consequence of that failure: s 45(3). As to the determination of compensation questions under the Pipe-lines Act 1962 generally see PARA 556 ante. Special provisions apply to compensation in respect of ecclesiastical property: see the Pipe-lines Act 1962 s 51(3), (5) (as amended); and PARA 583 note 11 ante. For the meaning of 'ecclesiastical property' for these purposes see PARA 557 note 10 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(vii) Preservation of Amenity and Avoidance of Obstruction and Interference/593. Avoidance of obstructions.

593. Avoidance of obstructions.

No person may place a length of pipeline¹ above or beneath the surface of waters over which a harbour authority² has jurisdiction except with its consent and subject to such, if any, reasonable conditions as it may impose for securing that the length does not constitute an obstruction or danger to navigation³. A harbour authority must not unreasonably withhold its consent⁴. If a dispute arises as to whether the authority unreasonably withholds its consent⁵, or whether the conditions imposed by it are reasonable⁶, the dispute must be referred to and determined by the Secretary of State⁷.

A person who acts in contravention of this provision is liable, on summary conviction, to a fine⁸.

1 For the meaning of 'pipeline' see PARA 559 ante. As to the length of a pipeline see the Pipe-lines Act 1962 s 66(2); and PARA 559 ante.

2 For the meaning of 'harbour authority' see the Merchant Shipping Act 1995 s 151(1) (cited in PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 619); definition applied by the Pipe-lines Act 1962 s 39(4) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 32).

The Pipe-lines Act 1962 as originally enacted referred to the Oil in Navigable Waters Act 1955, which was repealed and replaced by the Prevention of Oil Pollution Act 1971: see s 33(1), Schedule. The Merchant Shipping Act 1995 s 151(1) contains provisions formerly in the Prevention of Oil Pollution Act 1971 ss 8(2), 29(1).

3 Pipe-lines Act 1962 s 39(1). As to the exclusion of s 39 (as amended) see PARA 560 et seq ante.

4 Ibid s 39(2). See note 3 supra.

5 Ibid s 39(2)(a). See note 3 supra.

6 Ibid s 39(2)(b). See note 3 supra.

7 Ibid s 39(2). See note 3 supra. As to the Secretary of State see PARA 555 ante.

8 See ibid s 39(3) (as amended); and PARA 624 post. See note 3 supra.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(2) CONTROL OF CONSTRUCTION/(vii) Preservation of Amenity and Avoidance of Obstruction and Interference/594. Avoidance of interference with telegraphic lines.

594. Avoidance of interference with telegraphic lines.

Electrical apparatus forming part of a pipeline¹ must be so constructed², installed and used as to prevent interference with any electronic communication apparatus³ kept installed for the purposes of an electronic communications code network⁴ or with the service provided by any such network or with any apparatus used by railway undertakers⁵ for the purpose of signalling, or of controlling, directing or securing the safety of, traffic on their railway or the proper functioning of such apparatus⁶.

That part of the electronic communications code⁷ which provides a procedure for certain cases where works involve the alteration of electronic communication apparatus applies, for the purposes of works in pursuance of a compulsory rights order⁸, to the person authorised to execute those works⁹.

1 For the meaning of 'pipeline' see PARA 559 ante.

2 As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

3 As to electronic communications apparatus (formerly telecommunication apparatus) see TELECOMMUNICATIONS vol 97 (2010) PARA 163.

4 As to electronic communications code networks see TELECOMMUNICATIONS vol 97 (2010) PARA 174.

5 For the meaning of 'railway undertakers' see PARA 562 note 3 ante.

6 Pipe-lines Act 1962 s 40(1) (amended by the Telecommunications Act 1984 s 109, Sch 4 para 41; and the Communications Act 2003 s 406(1), Sch 17 para 28).

7 Ie the electronic communications code para 23: see the Pipe-lines Act 1962 s 40(2) (as substituted and amended: see note 9 infra). As to the electronic communications code see TELECOMMUNICATIONS vol 97 (2010) PARA 151 et seq.

8 For the meaning of 'compulsory rights order' see PARA 597 post.

9 Pipe-lines Act 1962 s 40(2) (substituted by the Telecommunications Act 1984 Sch 4 para 41; amended by the Communications Act 2003 Sch 17 para 28).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(3) COMPULSORY ACQUISITION OF LAND/595. Procedure on application for a compulsory purchase order.

(3) COMPULSORY ACQUISITION OF LAND

595. Procedure on application for a compulsory purchase order.

A person proposing to execute works in land¹ in order to place in it a pipeline², or a length of pipeline³, may be authorised by an order made by the Secretary of State⁴ (a 'compulsory purchase order'⁵) to purchase compulsorily land described in the order which is required by that person as the site of any of the works⁶.

An application for a compulsory purchase order must be made to the Secretary of State in writing and must:

- 356 (1) state the name and address of the person in whose favour the order⁷ is to be made⁸;
- 357 (2) be accompanied by three copies of a map⁹ on which are delineated the boundaries of the land proposed to be comprised in the order¹⁰; and
- 358 (3) contain such other particulars as may be prescribed¹¹.

Where an application for a compulsory purchase order is duly made to the Secretary of State¹², he must take it into consideration and give notice¹³ to the applicant of his decision either that he refuses to make the order or that the application is to be allowed to proceed¹⁴. Where notice is so given to the applicant that his application is to be allowed to proceed, certain other requirements must be complied with¹⁵ as a condition precedent for the matter to be taken further¹⁶, namely:

- 359 (a) the applicant must publish in two successive weeks in one or more local newspapers circulating in the locality in which the land proposed to be comprised in the order is situated a notice in the prescribed form¹⁷ stating that application has been made for the making of the order, describing the land, naming a place in the locality where a copy of the map may be inspected and specifying the time, not being less than 28 days¹⁸ from the date on which the notice is first published, within which and the manner in which objections to the application may be made to the Secretary of State¹⁹; and
- 360 (b) the applicant must serve on every person specified for these purposes²⁰ a notice in the prescribed²¹ form stating the effect of the order and that application for the making of the order has been made and specifying the time, not being less than 28 days from the date on which the notice is served, within which and the manner in which objection to the application may be made to the Secretary of State²².

Where the proper notices have been duly published and served, and an objection to the application is duly made by any such person as is mentioned in head (b) above²³ and is not withdrawn, the Secretary of State must in no event grant the application without either ordering a public inquiry to be held²⁴ with respect to the objection and considering the report of the person who held it or affording to the objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose and considering the report of the person so appointed²⁵. Where any such person as is mentioned in head (b)

above²⁶ by whom an objection has been made avails himself of the opportunity of being heard, the Secretary of State must allow the applicant for the order, and any other persons to whom it appears to him expedient to do so, an opportunity of being heard on the same occasion²⁷. Nevertheless, the Secretary of State may require any such person who has made an objection to state in writing the grounds of his objection, and may disregard for the purposes of this provision an objection made by any such person if he is satisfied that the objection relates exclusively to matters which can be dealt with by the Lands Tribunal²⁸.

Where the Secretary of State refuses to make a compulsory purchase order, he must give to the applicant a written statement of his reasons for doing so²⁹.

1 For the meaning of 'in' in this context see PARA 562 note 8 ante. As to the meaning of 'land' see PARA 557 note 8 ante.

2 For the meaning of 'pipeline' see PARA 559 ante.

3 As to references to the length of a pipeline see the Pipe-lines Act 1962 s 66(2); and PARA 559 ante.

4 As to the Secretary of State see PARA 555 ante.

5 See the Pipe-lines Act 1962 ss 11(1), 66(1).

6 Ibid s 11(1). As to the exclusion of s 11 see PARA 560 et seq ante. A compulsory purchase order is subject to special parliamentary procedure (as to which see PARLIAMENT vol 34 (Reissue) PARA 914 et seq): s 4(5).

In determining a question with respect to compensation claimed in consequence of the making of a compulsory purchase order, the Lands Tribunal must not take into account any interest in land, or any enhancement of the value of any interest in land, by reason of any building erected, works executed or improvement or alteration made, whether on the land comprised in the order or on any other land with which the claimant is, or was at the time of the erection, doing or making of the building, works, improvement or alteration, directly or indirectly concerned, if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works, or the making of the improvement or alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation: Pipe-lines Act 1962 s 11(4), Sch 3 para 3. This provision applies to a compulsory purchase order for the purpose of rendering it effectual and of modifying the Land Compensation Act 1961 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq) in relation to the assessment of compensation payable in consequence of the purchase, by virtue of such an order, of any land: see the Pipe-lines Act 1962 s 11(4). Special provisions apply to compensation in respect of ecclesiastical property: see s 51(3), (5) (as amended); and PARA 583 note 11 ante. For the meaning of 'ecclesiastical property' for these purposes see PARA 557 note 10 ante. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

7 I.e. the order which is sought in the application: ibid s 11(3), Sch 2 para 1(a). The provisions of Sch 2 Pt I (paras 1-9) (as amended) (as to Sch 2 paras 6-9 see PARA 596 post) have effect with respect to the making of applications for compulsory purchase orders, for the purpose of securing that opportunities are afforded for the making of objections to such applications, with respect to any modifications subject to which such orders may be made, for limiting the rights of persons to question the validity of such orders, and with respect to other related matters therein mentioned: see s 11(3).

8 Ibid Sch 2 para 1(a). As to the penalties for sending a false application for a compulsory purchase order see s 46 (as amended); and PARA 628 post.

9 The scale of the map must not be less than 1 in 10,560: ibid Sch 2 para 1(b) (amended by the Pipe-lines (Metrication) Regulations 1992, SI 1992/449, reg 2(2)(a)(iii)).

10 Pipe-lines Act 1962 Sch 2 para 1(b).

11 Ibid Sch 2 para 1(c). 'Prescribed' means prescribed by regulations made under the Pipe-lines Act 1962: s 66(1). At the date at which this volume states the law no such regulations had been made for the purposes of Sch 2 para 1 (as amended). As to the making of regulations under the Pipe-lines Act 1962 generally see PARA 555 ante.

12 On an application for such an order, the Secretary of State may grant the application or refuse it: ibid s 11(2).

13 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

14 Pipe-lines Act 1962 Sch 2 para 2. A decision to allow the application to proceed is without prejudice to its subsequent refusal in the exercise of the discretion of the Secretary of State: Sch 2 para 2.

15 Where a document is required to be served on an owner of ecclesiastical property, the requirement in *ibid* s 51(1) (as amended) (see PARA 557 ante) must also be complied with: Sch 2 para 3.

16 *Ibid* Sch 2 para 3.

17 For the meaning of 'prescribed' see note 11 supra. As to the form so prescribed see the Pipe-lines (Notices) Regulations 1963, SI 1963/151, reg 3, Schedule (Form No 1). A form substantially to the like effect may be used in place of the form so prescribed: see reg 3.

18 For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

19 *Ibid* Sch 2 para 3(a).

20 The persons specified for the purposes of *ibid* Sch 2 para 3(b) (as amended) are every person who is an owner, lessee, tenant (whatever the tenancy period) or occupier of any land to be comprised in the order, a person to whom the applicant would, if it were proceeding to purchase that land under the Compulsory Purchase Act 1965 s 5(1) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 616), be required to give notice to treat, or a person who the applicant thinks would be likely to be entitled to make a claim for compensation under the Compulsory Purchase Act 1965 s 10 (as amended) (compensation for injurious affection) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 718) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the applicant after making diligent inquiry: Pipe-lines Act 1962 Sch 2 para 3(b) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, art 2, Schedule para 4(4)(a)). For the meaning of 'owner' see PARA 557 note 7 ante.

21 For the meaning of 'prescribed' see note 11 supra. As to the form so prescribed see the Pipe-lines (Notices) Regulations 1963, SI 1963/151, Schedule (Form No 2). A form substantially to the like effect may be used in place of the form so prescribed: see reg 3.

22 Pipe-lines Act 1962 Sch 2 para 3(b) (as amended: see note 20 supra).

23 *Ie* any such person as is mentioned in *ibid* Sch 2 para 3(b) (as amended) (see note 20 supra): see Sch 2 para 4(1) (as amended: see note 25 infra).

24 As to public inquiries see PARA 602 post.

25 Pipe-lines Act 1962 Sch 2 para 4(1) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, Schedule para 4(4)(b)(i)).

26 *Ie* any such person as is mentioned in the Pipe-lines Act 1962 Sch 2 para 3(b) (as amended) (see note 20 supra): see Sch 2 para 4(2) (as amended: see note 27 infra).

27 *Ibid* Sch 2 para 4(2) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, Schedule para 4(4)(b)(i)).

28 Pipe-lines Act 1962 Sch 2 para 4(3) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, Schedule para 4(4)(b)(ii)).

29 Pipe-lines Act 1962 Sch 2 para 5.

UPDATE

595 Procedure on application for a compulsory purchase order

TEXT AND NOTES 6, 28--Reference to the Lands Tribunal is now to the Upper Tribunal: Pipe-lines Act 1962 Sch 2 para 4(3), Sch 3 para 3 (amended by SI 2009/1307).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(3) COMPULSORY ACQUISITION OF LAND/596. Making of compulsory purchase orders.

596. Making of compulsory purchase orders.

A compulsory purchase order¹ may be made with or without modification as regards the land² sought to be comprised in it, but, unless all persons interested consent, must not be so made as to authorise the person in whose favour it is made to purchase any land which the order would not have authorised that person to purchase if it had been made without modification³. Every compulsory purchase order must have annexed to it a map⁴ on which are plainly delineated the boundaries of the land comprised in the order⁵.

As soon as may be after a compulsory purchase order has been made, the person in whose favour it has been made must publish in one or more local newspapers circulating in the locality in which the land comprised in the order is situated⁶ a notice in the prescribed form⁷, describing the land, stating that the order has been made and naming a place where a copy of it and of the map annexed to it may be inspected at all reasonable hours, and must serve⁸ a like notice, a copy of the order and a copy, on the same scale, of the map annexed to the order on every person who is an owner⁹, lessee or occupier of any land comprised in the order¹⁰.

If a person aggrieved by a compulsory purchase order¹¹ desires to question its validity, or the validity of any provision contained in it, on the ground that the making of the order or the inclusion of that provision was not authorised by the Pipe-lines Act 1962, or on the ground that any requirement of that Act or of any regulation made under it has not been complied with in relation to the order, he may, within six weeks from the date¹² on which the order becomes operative¹³, make an application to the High Court to question the validity of the order¹⁴. On such an application, the court may:

- 361 (1) by interim order suspend the operation of the order whose validity is questioned, or of any provision of that order, either generally or in so far as it affects any property of the applicant or a part of any such property, until the final determination of the proceedings¹⁵; and
- 362 (2) if satisfied that the validity of the order whose validity is questioned or the inclusion of any provision in it was not authorised by the Pipe-lines Act 1962 or that the interests of the applicant have been substantially prejudiced by failure to comply in relation to the order with any such requirement, quash the order or any of its provisions either generally or in so far as it affects any property of the applicant or a part of any such property¹⁶.

A compulsory purchase order may not be questioned in any legal proceedings whatever, except as provided above¹⁷, either before or after the order is made¹⁸.

1 For the meaning of 'compulsory purchase order' see PARA 595 ante. As to applications for compulsory purchase orders see PARA 595 ante.

2 As to the meaning of 'land' see PARA 557 note 8 ante.

3 Pipe-lines Act 1962 s 11(3), Sch 2 para 6. The provisions of Sch 2 Pt I (paras 1-9) (as amended) (as to Sch 2 paras 1-5 (as amended) see PARA 595 ante) have effect with respect to the making of applications for compulsory purchase orders, for the purpose of securing that opportunities are afforded for the making of objections to such applications, with respect to any modifications subject to which such orders may be made, for limiting the rights of persons to question the validity of such orders, and with respect to other related matters therein mentioned: see s 11(3).

Any sums agreed upon or awarded for the purchase, in pursuance of a compulsory purchase order, of the fee simple in land that is ecclesiastical property (for the meaning of which see PARA 557 note 10 ante), or to be paid by way of compensation for damage sustained by reason of severance or injury affecting such land (being severance or injury arising from the purchase of land in pursuance of such an order), must, instead of being paid as provided by the Lands Clauses Acts, be paid to the Diocesan Board of Finance for the diocese in which the land is situated: Pipe-lines Act 1962 s 51(4) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 9(a)). Sums so paid to the Commissioners with reference to consecrated land must be applied by them in such manner as they may determine, and sums paid to them with reference to unconsecrated land must be applied by them for the purposes for which the proceeds of a sale by agreement of the fee simple would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale: see the Pipe-lines Act 1962 s 51(5) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 9(a), (c), (d)). As to diocesan boards of finance see ECCLESIASTICAL LAW vol 14 paras 517-518; and as to the incumbent of a benefice see ECCLESIASTICAL LAW vol 14 para 541.

4 The scale of the map must be not less than 1 in 10,560: see the Pipe-lines Act 1962 Sch 2 para 7(1) (amended by the Pipe-lines (Metrication) Regulations 1992, SI 1992/449, reg 2(2)(a)(iii)).

5 Pipe-lines Act 1962 Sch 2 para 7(1) (as amended: see note 4 supra).

6 Where application is made to the Secretary of State for the making of a compulsory purchase order applicable to land which includes land which has been acquired by statutory undertakers for the purposes of their undertaking, then if on a representation made to the Secretary of State before the expiration of the time specified in the notice published (as regards that application), in pursuance of *ibid* Sch 2 para 3(a) (see PARA 595 ante), the Secretary of State is satisfied: (1) that any of the land is used for the purpose of the carrying on of their undertaking (Sch 2 para 8(a)); or (2) that an interest in any of the land is held for those purposes (Sch 2 para 8(b)), the order must not be made so as to authorise the purchase of any land, as to which he is so satisfied, except land whose nature and situation are such: (a) that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking (Sch 2 para 8(i)); or (b) that, if purchased, it can be replaced by other land belonging to or available for acquisition by the undertakers without such detriment (Sch 2 para 8(ii)), and the Secretary of State certifies accordingly (Sch 2 para 8). For these purposes, 'statutory undertakers' means any person authorised by any Act (whether public general or local) or by any order or scheme made under or confirmed by an Act to construct, work or carry on a railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power: s 66(1) (definition amended by the Gas Act 1986 s 67(4), Sch 9 Pt I; the Electricity Act 1989 s 112(4), Sch 18; and the Water Act 1989 s 190, Sch 25 para 30). As to the Secretary of State see PARA 555 ante.

7 For the meaning of 'notice' see PARA 555 note 4 ante. 'Prescribed' means prescribed by regulations made under the Pipe-lines Act 1962: s 66(1). As to the making of regulations under the Pipe-lines Act 1962 generally see PARA 555 ante. As to the form so prescribed see the Pipe-lines (Notices) Regulations 1963, SI 1963/151, reg 3, Schedule (Form No 3). A form substantially to the like effect may be used in place of the form so prescribed: see reg 3.

8 As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

9 For the meaning of 'owner' see PARA 557 note 7 ante.

10 Pipe-lines Act 1962 Sch 2 para 7(2).

11 *Ie* a compulsory purchase order other than one confirmed by Act of Parliament under the Statutory Orders (Special Procedure) Act 1945 s 6 (see PARLIAMENT vol 34 (Reissue) PARAS 925-926): Pipe-lines Act 1962 Sch 2 para 9(1). As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

12 For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

13 *Ie* operative under the Statutory Orders (Special Procedure) Act 1945: see the Pipe-lines Act 1962 Sch 2 para 9(1).

14 *Ibid* Sch 2 para 9(1). As to the procedure for questioning the validity of a compulsory purchase order or minister's certificate see CPR Sch 1 RSC Ord 94 rr 1-3; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 613.

15 Pipe-lines Act 1962 Sch 2 para 9(2)(a).

16 *Ibid* Sch 2 para 9(2)(b).

17 *Ie* *ibid* Sch 2 para 9(1), (2) (see the text and notes 11-16 supra): see Sch 2 para 9(3).

18 Ibid Sch 2 para 9(3).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(3) COMPULSORY ACQUISITION OF LAND/597. Compulsory rights orders.

597. Compulsory rights orders.

A person proposing to execute works in land¹ in order to place there a pipeline or a length of a pipeline² may be authorised by an order made by the Secretary of State³ (a 'compulsory rights order')⁴: (1) to place the pipeline or length in land described in the order⁵; (2) to use the pipeline or length to execute in that land any other pipeline works⁶ becoming necessary for the purpose of placing the pipeline or length in that land or in consequence of its being placed there⁷; and (3) to exercise in relation to the line or length such of the rights⁸ as may be specified in the order⁹.

The provisions relating to the making of compulsory purchase orders¹⁰ apply to the making of compulsory rights orders, subject to modifications¹¹. On an application for a compulsory rights order, the Secretary of State has power in his discretion to grant the application or refuse it¹².

After the placing of the pipeline or length of pipeline authorised by the order, a compulsory rights order enures for the benefit of the owner¹³ for the time being of the pipeline¹⁴.

1 For the meaning of 'in' in this context see PARA 562 note 8 ante. As to the meaning of 'land' see PARA 557 note 8 ante.

2 For the meaning of 'pipeline' see PARA 559 ante. As to references to the length of a pipeline see the Pipe-lines Act 1962 s 66(2): and PARA 559 ante.

3 As to the Secretary of State see PARA 555 ante.

4 Pipe-lines Act 1962 ss 12(1), 66(1). The authorisation may be subject to any conditions which may be attached to it under s 13 (as amended) (see PARA 598 post): see s 12(1).

5 Ibid s 12(1).

6 For the meaning of 'pipeline works' see PARA 561 note 12 ante.

7 Pipe-lines Act 1962 s 12(1).

8 I.e. the rights mentioned in ibid s 12(1), Sch 4: see s 12(1). The rights so mentioned are: (1) for any person authorised by the person for whose benefit the compulsory rights order enures to pass over the land comprised in the order for the purpose of getting to or from the pipeline on foot or with vehicles, and, where the right specified by the order is one of passing with vehicles, to transport materials, plant and apparatus in them (Sch 4 para 1); (2) to place, continue or renew markers for indicating the position of the pipeline in so far as it is placed below the surface of the land comprised in the order (Sch 4 para 2); (3) to erect stiles, gates, bridges or culverts for the facilitation of access to the pipeline (Sch 4 para 3); (4) to construct such works accessory to the pipeline as may be specified in the order, being works for the facilitation of maintenance or inspection of the pipeline or for protecting it from damage (Sch 4 para 4); and (5) temporarily to place on the land comprised in the order materials, plant or apparatus required in connection with the pipeline and brought on to the land by a vehicle in pursuance of such a right as is mentioned in head (1) supra (Sch 4 para 5).

9 Ibid s 12(1). As to conditions that may be attached to a compulsory rights order see PARA 598 post. As to the exclusion of s 12 (as amended) see PARA 560 et seq ante.

10 I.e. the provisions of ibid s 12(3), Sch 2 Pt I (paras 1-9) (as amended) (see PARA 595 ante): see s 12(3). For the meaning of 'compulsory purchase order' see PARA 595 ante.

11 Ibid s 12(3). The application and modification of provisions described in the text have effect with respect to the making of applications for compulsory rights orders for the purpose of securing that opportunities are afforded for the making of objections to such applications, with respect to any modifications subject to which such orders may be made, for limiting the rights of persons to question the validity of such orders, and with

respect to other related matters therein mentioned: see s 12(3). The modifications are those specified in s 12(3), Sch 2 Pt II para 10: Sch 2 para 10(1). For references to a compulsory purchase order there are to be substituted references to a compulsory rights order: Sch 2 para 10(2). There must be included among the requirements under Sch 2 para 1 (as amended) (see PARA 595 ante) with which the application must comply a requirement that it must state what rights are sought to be obtained by the application: Sch 2 para 10(3). There must be included among the particulars to be included in a notice published under Sch 2 para 3 (as amended) (see PARA 595 ante), particulars of the rights sought to be obtained by the application: Sch 2 para 10(4). There must also be included among the particulars to be included in a notice published under Sch 2 para 7(2) (see PARA 596 ante), a statement of the rights of which the exercise is authorised by the order: Sch 2 para 10(6). In relation to compulsory rights orders, the provisions of Sch 2 para 6 (see PARA 596 ante) are substituted by Sch 2 para 10(5), and Sch 2 para 8 (see PARA 596 ante) is amended by Sch 2 para 10(7). As to the forms to be used for these purposes see the Pipe-lines (Notices) Regulations 1963, SI 1963/151, reg 3, Schedule (Form No 4) (Form of advertisement of making an application: see PARA 595 ante), (Form No 5) (Form of notice to persons affected: see PARA 595 ante), (Form No 6) (Form of notice of making order: see PARA 596 ante). A form substantially to the like effect may be used in place of the forms so prescribed: see reg 3.

12 Pipe-lines Act 1962 s 12(2).

13 For the meaning of 'owner' see PARA 557 note 7 ante.

14 Pipe-lines Act 1962 s 12(4). A compulsory rights order is subject to special parliamentary procedure (as to which see PARLIAMENT vol 34 (Reissue) PARA 916 et seq): s 12(7).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(3) COMPULSORY ACQUISITION OF LAND/598. Power to attach conditions to a compulsory rights order.

598. Power to attach conditions to a compulsory rights order.

If the Secretary of State¹ grants an application for a compulsory rights order², he may attach to it such conditions as he thinks fit, other than a condition for securing a matter that may be secured under the provisions of the Pipe-lines Act 1962 relating to the safety of pipelines³ or the Health and Safety at Work etc Act 1974⁴, with respect to:

- 363 (1) the manner, method or timing of the execution of pipeline works⁵ authorised by the order⁶;
- 364 (2) the execution, and the manner, method or timing of the execution, of works which it appears to him are or will be requisite or desirable prior to or in consequence of the execution of pipeline works authorised by the order, or in consequence of a failure to comply with any such condition as has effect by virtue of head (1) above⁷;
- 365 (3) where the order authorises a pipeline or length of pipeline to be placed in land⁸ of which the owners⁹ are statutory undertakers¹⁰, being operational land¹¹, the execution, and the manner, method or timing of the execution, of works which it appears to the Secretary of State are or will be requisite or desirable as a result of the pipeline or length of pipeline being situated in such land¹²;
- 366 (4) without prejudice to heads (1) to (3) above, the execution of works referred to in any of those provisions by or under the supervision of the owners of land comprised in the order¹³;
- 367 (5) the payment of costs of the execution of any works or carrying out any other requirements to which a condition having effect by virtue of these provisions relates¹⁴; and
- 368 (6) the settlement of any dispute arising as a result of any condition mentioned in heads (1) to (5) above¹⁵.

Any such conditions attached to a compulsory rights order must be set out in a schedule to the order¹⁶.

If any works are executed in contravention of such a condition attached to a compulsory rights order, the person executing them or, in the event of a failure by a person to comply with a requirement to carry out any works imposed on him by such a condition, that person, is guilty of an offence¹⁷.

1 As to the Secretary of State see PARA 555 ante.

2 For the meaning of 'compulsory rights order' see PARA 597 ante. As to compulsory rights orders see PARA 597 ante.

3 I.e. the Pipe-lines Act 1962 ss 20-34 (as amended), most of which is now repealed in favour of regulations (see PARA 554 ante; and see note 4 infra), except s 26A (as added) (as to which see PARA 618 post). For the meaning of 'pipeline' see PARA 559 ante.

4 Ibid s 13(1) (amended by the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 2(b), Sch 2 para 1). As to the exclusion of the Pipe-lines Act 1962 s 13 (as amended) see PARA 561 et seq ante. As to requirements relating to pipelines for the purposes of health and safety see the Pipelines Safety Regulations 1996, SI 1996/825 (as amended); and PARA 609 et seq post. As to the Health and Safety at Work etc Act 1974 see generally HEALTH AND SAFETY AT WORK.

- 5 For the meaning of 'pipeline works' see PARA 561 note 12 ante.
- 6 Pipe-lines Act 1962 s 13(1)(a).
- 7 Ibid s 13(1)(b).
- 8 For the meaning of 'in' in this context see PARA 562 note 8 ante. As to the meaning of 'land' see PARA 557 note 8 ante. As to references to the length of a pipeline see ibid s 66(2); and PARA 559 ante.
- 9 For the meaning of 'owner' see PARA 557 note 7 ante.
- 10 For the meaning of 'statutory undertakers' see PARA 596 note 6 ante.
- 11 For the purposes of these provisions, 'operational land' has the same meaning as in the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1010-1011): see the Pipe-lines Act 1962 s 13(6); and the Interpretation Act 1978 s 17(2)(a). If any question arises, in relation to the Pipe-lines Act 1962 s 13 (as amended), whether land of statutory undertakers is operational land, as defined by s 13 (as amended), that question must be determined by the Secretary of State: s 13(7).
- 12 Ibid s 13(1)(c).
- 13 Ibid s 13(1)(d).
- 14 Ibid s 13(1)(e).
- 15 Ibid s 13(1)(f).
- 16 Ibid s 13(1) (as amended: see note 4 supra).
- 17 See ibid s 13(5) (as amended); and PARA 625 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(3) COMPULSORY ACQUISITION OF LAND/599. Power to revoke a compulsory rights order.

599. Power to revoke a compulsory rights order.

The Secretary of State¹ may by order revoke a compulsory rights order² to the extent to which it appears to him to have become unnecessary in consequence of a pipeline's diversion or abandonment or of the authorisation's becoming of no effect³, as follows:

- 369 (1) where any pipeline or length of pipeline⁴ as has been placed in land⁵ by virtue of a compulsory rights order is diverted⁶ from the land comprised in the order or is abandoned⁷; or
- 370 (2) where a pipeline construction authorisation⁸ relating to a pipeline or length of a pipeline to be placed in land in pursuance of a compulsory rights order becomes of no effect by virtue of the time-limit within which authorised works must be commenced⁹.

At any time, by order, the Secretary of State may also revoke a compulsory rights order in whole or in part on the application of the person for whose benefit the order for the time being enures, but the revocation of the order does not affect its previous operation¹⁰.

A compulsory rights order does not affect any right over the land comprised in it which would not have been affected had that land been compulsorily purchased by virtue of a compulsory purchase order¹¹, nor does it authorise the disregard of any enactment or of any instrument having effect by virtue of any enactment, and it is not to be taken to confer a right of support for the pipeline placed by virtue of the compulsory rights order in the land¹².

1 As to the Secretary of State see PARA 555 ante.

2 For the meaning of 'compulsory rights order' see PARA 597 ante. As to compulsory rights orders see PARA 597 ante.

3 Pipe-lines Act 1962 s 12(5) (s 12(5) substituted, s 12(5A) added, by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 10).

4 For the meaning of 'pipeline' see PARA 559 ante. As to references to the length of a pipeline see the Pipe-lines Act 1962 s 66(2); and PARA 559 ante.

5 For the meaning of 'in' in this context see PARA 562 note 8 ante. As to the meaning of 'land' see PARA 557 note 8 ante.

6 For the meaning of 'diversion' see PARA 573 note 5 ante. See further PARAS 585-587 ante.

7 Pipe-lines Act 1962 s 12(5)(a) (as substituted: see note 3 supra). As to abandonment of pipelines see PARA 580 ante.

8 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see *ibid* s 1(1) (as amended); and PARA 573 et seq ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

9 *Ibid* s 12(5)(b) (as substituted: see note 3 supra). If the execution of the authorised works has not been substantially begun at the expiration of 12 months from the date on which authorisation for pipeline construction was granted, the authorisation becomes of no effect: see s 1(4); and PARA 573 ante.

10 *Ibid* s 12(5A) (as added: see note 3 supra).

11 For the meaning of 'compulsory purchase order' see PARA 595 ante. As to compulsory purchase orders see PARAS 595-596 ante.

12 Pipe-lines Act 1962 s 12(6).

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600. Power to vary a compulsory rights order.

At any time, by order¹, the Secretary of State² may vary a compulsory rights order³ on the application of an owner⁴, lessee, tenant (whatever the tenancy period) or occupier of land⁵ comprised in the order⁶, or of the person for whose benefit such an order for the time being enures, or on his own motion⁷. The order may be varied:

- 371 (1) where the compulsory rights order has effect without conditions, by attaching to it a condition with respect to any specified matter⁸;
- 372 (2) where the order has effect subject to conditions, by revoking or varying any of them or by attaching further such conditions to it⁹.

The conditions precedent to the making of an order varying a compulsory rights order are:

- 373 (a) where an application is made for the order, the applicant, or, in any other case, the Secretary of State, must have served¹⁰ on every person concerned, other than that applicant, a notice in the prescribed form¹¹, stating the effect of the order and specifying the time¹², not being less than 21 days from the date of service of the notice, within which and the manner in which objection to the making of the order may be made to the Secretary of State¹³; and
- 374 (b) where an objection is duly made by a person on whom the notice has been served, and is not withdrawn, the Secretary of State must not make the order without giving the objector the opportunity of being heard by him, and if the objector avails himself of that opportunity, he must give the applicant, and any other person to whom it appears to the Secretary of State expedient to give it, an opportunity of being heard on the same occasion¹⁴.

Upon the making of such an order to vary a compulsory rights order, where an order is made on an application, the applicant (or, in any other case, the Secretary of State) must take steps for notifying the persons concerned¹⁵, as he may direct or, as the case may be, thinks fit¹⁶.

1 The power to make an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Pipe-lines Act 1962 s 13(8). As to the exclusion of s 13 (as amended) see PARA 561 et seq ante.

2 As to the Secretary of State see PARA 555 ante.

3 Ie subject to the Pipe-lines Act 1962 s 13(3) (see heads (a) and (b) in the text): see s 13(2) (as amended: see note 7 infra). For the meaning of 'compulsory rights order' see PARA 597 ante. As to compulsory rights orders see PARA 597 ante.

4 For the meaning of 'owner' see PARA 557 note 7 ante.

5 As to the meaning of 'land' see PARA 557 note 8 ante.

6 Ie on the application of a person who falls within the Pipe-lines Act 1962 s 13(2A) (added by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, art 2, Schedule para 4(3)(b)): see the Pipe-lines Act 1962 s 13(2) (as amended: see note 7 infra).

7 Ibid s 13(2) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, Schedule para 4(3)(a)).

8 Pipe-lines Act 1962 s 13(2)(a). The matters are those specified in s 13(1) (as amended) (see PARA 598 ante): s 13(2)(a).

9 Ibid s 13(2)(b).

10 As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

11 For the meaning of 'notice' see PARA 555 note 4 ante. 'Prescribed' means prescribed by regulations made under the Pipe-lines Act 1962: s 66(1). As to the making of regulations under the Pipe-lines Act 1962 generally see PARA 555 ante. As to the form so prescribed see the Pipe-lines (Notices) Regulations 1963, SI 1963/151, reg 3, Schedule (Form No 7). A form substantially to the like effect may be used in place of the form so prescribed: see reg 3.

12 For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

13 Ibid s 13(3).

14 Ibid s 13(3). As to inquiries see PARA 602 et seq post.

15 In relation to a variation of a compulsory rights order, 'persons concerned' means the person for whose benefit the order for the time being enures, and every owner, lessee, tenant (whatever the tenancy period) or occupier of any land appearing to the Secretary of State to be affected by the variation: *ibid* s 13(6) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519, Schedule para 4(3)(c)).

16 Pipe-lines Act 1962 s 13(4).

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601. Compensation in respect of a compulsory rights order.

If a person entitled to an interest in land¹ which comprises, or is held with, land to which a compulsory rights order² applies, being an interest subsisting at the time when the order was made, proves that the value of his interest in that land is depreciated by the making of the order, then the person in whose favour the order was made must pay him compensation³ equal to the amount of the depreciation⁴.

Where as a result of the exercise of any right conferred by a compulsory rights order⁵, a person suffers loss by reason of damage to land, or disturbance in the enjoyment of any land or chattels, he is entitled to compensation in respect of that loss from the person in whose favour the order was made⁶. Where the owner⁷ of the pipeline⁸ is not the person in whose favour the order was made, and where the right the exercise of which caused the loss was exercised by that owner, the person who suffers the loss is entitled to compensation in respect of that loss from the owner of the pipeline⁹.

1 As to the meaning of 'land' see PARA 557 note 8 ante.

2 For the meaning of 'compulsory rights order' see PARA 597 ante. As to compulsory rights orders see PARA 597 ante.

3 As to the determination of compensation questions under the Pipe-lines Act 1962 generally see PARA 556 ante. In the case of agricultural land, there is an alternative right to compensation: see s 45(3); and PARA 592 ante.

4 Ibid s 14(1). As to the exclusion of s 14 see PARA 561 et seq ante.

5 As to the rights which may be conferred by a compulsory rights order see ibid s 12(1); and PARA 597 ante.

6 Ibid s 14(2). Special provisions apply to compensation in respect of ecclesiastical property: see s 51(3), (5) (as amended); and PARA 583 note 11 ante. For the meaning of 'ecclesiastical property' for these purposes see PARA 557 note 10 ante.

7 For the meaning of 'owner' see PARA 557 note 7 ante.

8 For the meaning of 'pipeline' see PARA 559 ante.

9 Pipe-lines Act 1962 s 14(2).

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(4) INQUIRIES AND HEARINGS

602. Inquiries and hearings.

Where the Secretary of State¹ orders a public inquiry to be held under any provision of the Pipe-lines Act 1962², the provisions governing those inquiries are the same, with certain modifications³, as those governing local government inquiries⁴. Moreover, there are detailed provisions⁵ which apply in relation to any inquiry caused by the Secretary of State to be held in England or Wales for the grant of pipeline construction authorisations or of compulsory purchase orders or compulsory rights orders⁶.

It is not open to a person to impugn the validity of a pipeline construction authorisation on the ground that an inquiry or hearing⁷ with respect to the application for the grant of the authorisation was combined with an inquiry or hearing⁸ with respect to an application made (by the applicant for the grant of the authorisation) for a compulsory purchase order or a compulsory rights order⁹. Nor is it open to a person to impugn the validity of a compulsory purchase order or compulsory rights order on the ground that an inquiry or hearing¹⁰ with respect to the application for the order was combined with an inquiry or hearing¹¹ with respect to an application made (by the applicant for the compulsory purchase order or compulsory rights order) for the grant of a pipeline construction authorisation¹².

1 As to the Secretary of State see PARA 555 ante.

2 Eg under the Pipe-lines Act 1962 s 1 (as amended), Sch 1 para 4(1) (as substituted) (objection to the granting of a pipeline construction authorisation): see PARA 575 ante.

3 For references to a 'department' in the Local Government Act 1972 s 250 (as amended) (attendance and evidence at, and costs of, inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105), there are substituted references to the Secretary of State: Pipe-lines Act 1962 s 47(1)(a). In the Local Government Act 1972 s 250(4) (as amended) (costs incurred by the minister: see LOCAL GOVERNMENT vol 69 (2009) PARA 105), references to the payment of costs by a local authority not being party to the inquiry are omitted: Pipe-lines Act 1962 s 47(1)(b). The Local Government Act 1972 s 250(4), (5) (as amended) (costs: see LOCAL GOVERNMENT vol 69 (2009) PARA 105), applies, with the same modifications, in relation to any hearing ordered by the Secretary of State to take place in England or Wales in pursuance of any provision of the Pipe-lines Act 1962, as if the hearing were a public inquiry: s 47(1) (amended by the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 2(a), Sch 1). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. As to power to direct inquiries see the Local Government Act 1972 s 250 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 105.

4 Pipe-lines Act 1962 s 47(1) (as amended: see note 3 supra). The provisions referred to are those of the Local Government Act 1972 s 250(2)-(5) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105): see the Pipe-lines Act 1962 s 47(1) (as so amended).

5 See the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended); and PARA 604 et seq post. As to pre-inquiry meetings see PARA 603 post. As to site inspections see PARA 607 post.

6 See *ibid* rr 2(1), 3(1). The text refers to any inquiry caused by the Secretary of State to be held in England or Wales under the Pipe-lines Act 1962 s 47(3) (as amended), Sch 1 para 4 (as substituted) (see PARA 575 ante), Sch 1 para 6A (as added and amended) (see PARAS 576-577 ante) for the purpose of an application; or under s 47 (as amended), Sch 2 para 4 (as amended) (see PARA 595 ante) for the purpose of an order: Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, rr 2(1), 3(1). The Pipe-lines Act 1962 s 47(1) (as amended) (see the text and notes 1-4 supra), s 47(3) (as amended) (see the text and notes 7-12 infra), which applies the Local Government Act 1972 s 250(2)-(5) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105), applies to these rules: Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 3(2). For the meaning of 'compulsory

purchase order' see PARA 595 ante; and for the meaning of 'compulsory rights order' see PARA 597 ante. For the meaning of 'pipeline' see PARA 559 ante; and for the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante.

7 Ie under ibid Sch 1 (as amended) (see PARA 574 et seq ante): see s 47(3) (as amended: see note 9 infra).

8 Ie under ibid Sch 2 (as amended) (see PARA 595 et seq ante): see s 47(3) (as amended: see note 9 infra).

9 Ibid s 47(3) (amended by the Petroleum Act 1987 ss 30, 32(2), Sch 3; and the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 2(5)).

10 Ie under the Pipe-lines Act 1962 Sch 2 (as amended) (see PARAS 595-597 ante): see s 47(3) (as amended: see note 9 supra).

11 Ie under ibid Sch 1 (as amended) (see PARA 574 et seq ante): see s 47(3) (as amended: see note 9 supra).

12 Ibid s 47(3) (as amended: see note 9 supra).

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603. Pre-inquiry meeting.

The Secretary of State¹ may cause a pre-inquiry meeting² to be held if it appears to him desirable, and where he does so, the following provisions apply³. He must serve with the relevant notice⁴ a notification of his intention to do so and a statement of the matters about which he particularly wishes to be informed for the purposes of his consideration of the application⁵ in question, and where another Minister of the Crown or a government department has expressed in writing to the Secretary of State a view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, the Secretary of State must set this out in his statement and supply a copy to the minister or government department concerned⁶.

In respect of each locality through which the proposed pipeline⁷ is to pass, the applicant⁸ must publish in one or more newspapers circulating in that locality, a notice of the Secretary of State's intention to cause a pre-inquiry meeting to be held and of the statement served by the Secretary of State⁹. The notice must refer to and include the text of any statement served by the Secretary of State¹⁰. The applicant and any statutory objector¹¹ must, not later than eight weeks after the relevant date¹², serve an outline statement¹³ on each other and on the Secretary of State¹⁴. The Secretary of State may in writing require any person who has notified him of an intention or wish to appear at an inquiry to serve within four weeks of being so required, an outline statement on him, on any statutory objector and on the applicant¹⁵. The pre-inquiry meeting must be held not later than 16 weeks after the relevant date¹⁶. The Secretary of State must give not less than three weeks' written notice of the pre-inquiry meeting to any statutory objector, the applicant, any person known at the date of the notice to be a person entitled to appear at the inquiry¹⁷, and any other person whose presence at the pre-inquiry meeting seems to him to be desirable¹⁸.

An inspector may hold a pre-inquiry meeting where he considers it desirable¹⁹, and must arrange for not less than three weeks' written notice of any such meeting to be given to the applicant, any statutory objector, any person known at the date of the notice to be a person entitled to appear at the inquiry, and any other person whose presence appears to him to be desirable²⁰.

The inspector²¹ must preside at the pre-inquiry meeting, and must determine the matters to be discussed and the procedure to be followed, and he may require any person present at the meeting who, in his opinion, is behaving in a disruptive manner to leave it, and may refuse to permit him to return, or to attend only on such conditions as he may specify²².

1 As to the Secretary of State see PARA 555 ante.

2 For these purposes, 'pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that it is conducted efficiently and expeditiously, and where two or more such meetings are held, references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting: Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 2(1). As to the application of the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended), in relation to inquiries see PARA 602 ante.

3 Ibid r 4(2).

4 For these purposes, 'relevant notice' means the Secretary of State's written notice to the applicant, the relevant planning authority and statutory objectors of his intention to cause an inquiry to be held: *ibid* r 2(1). 'Applicant' means the person who makes the application for the grant of an authorisation or an order: r 2(1).

'Relevant planning authority' means a local planning authority within the meaning of the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28): Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 2(1). 'Statutory objector' means, where the Secretary of State has caused an inquiry to be held: (1) under the Pipe-lines Act 1962 Sch 1 para 4(1) (as substituted) (see PARA 575 ante), any person who has duly made an objection to the authorisation in accordance with Sch 1 (as amended), and whose objection has not been withdrawn; or (2) under Sch 2 para 4(1) (as amended) (see PARA 595 ante), any owner, lessee or occupier (except a tenant for a month or any period less than a month) of any land proposed to be comprised in the order who has duly made an objection to the application in accordance with Sch 2 (as amended) (see PARA 595 et seq ante), and whose objection has not been withdrawn or disregarded under Sch 2 para 4(3) (as amended) (see PARA 595 ante): Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 2(1).

5 For these purposes, 'application' means an application for the grant of an authorisation or an order: *ibid* r 2(1). 'Authorisation' means a pipeline construction authorisation for which an application has been made to the Secretary of State under the Pipe-lines Act 1962 s 1 (as amended) (see PARA 573 ante): Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 2(1). 'Order' means a compulsory purchase order under the Pipe-lines Act 1962 s 11 (see PARA 595 ante) or a compulsory rights order under s 12 (as amended) (see PARAS 597-599 ante) for which an application has been made to the Secretary of State: Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 2(1).

6 *Ibid* r 4(3).

7 As to pipelines see PARA 559 ante.

8 See note 4 *supra*.

9 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 4(4). The notice is that served in accordance with r 4(3) (see the text and notes 4-6 *supra*): see r 4(4).

10 *Ibid* r 4(5). The notice is that served in accordance with r 4(3) (see the text and notes 4-6 *supra*): see r 4(5).

11 See note 4 *supra*.

12 For these purposes, 'relevant date' means the date of the Secretary of State's written notice to the applicant, the relevant planning authority and statutory objectors of his intention to cause an inquiry to be held: Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 2(1).

13 For these purposes, 'outline statement' means a written statement of the principal submissions which a person proposes to put forward at an inquiry: *ibid* r 2(1).

14 *Ibid* r 4(6).

15 *Ibid* r 4(7).

16 *Ibid* r 4(8).

17 For the meaning of 'person entitled to appear at an inquiry' see PARA 606 post.

18 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 4(9). The Secretary of State may also require the applicant to take in relation to notification of the pre-inquiry meeting, one or more steps which he may under r 9 (see PARA 604 post) require him to take in relation to notification of the inquiry: r 4(9).

19 *Ie* whether or not one was held pursuant to *ibid* r 4(2) (see the text and notes 1-3 *supra*): see r 5(1).

20 *Ibid* r 5(1). Rule 4(10) (see the text and notes 21-22 *infra*) applies to a pre-inquiry meeting held in accordance with r 5: r 5(2).

21 For these purposes, 'inspector' means a person appointed by the Secretary of State to hold an inquiry or a re-opened inquiry: *ibid* r 2(1).

22 *Ibid* r 4(10).

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604. Procedure before the inquiry.

The Secretary of State¹ must, as soon as possible, notify the applicant² of the substance of each objection he receives from a statutory objector³ and, so far as possible, of the substance of other objections⁴.

The date fixed by the Secretary of State for the holding of an inquiry⁵ must be not later than: (1) 22 weeks after the relevant date⁶; or (2) in a case where the Secretary of State or the inspector⁷ causes a pre-inquiry meeting⁸ to be held⁹, eight weeks after the conclusion of that meeting¹⁰. Where the Secretary of State considers it impracticable to fix such a date, the date fixed is to be the earliest date after the end of the period mentioned in head (1) or head (2) above which he considers to be practicable¹¹. Unless the Secretary of State agrees a lesser period of notice with the applicant and statutory objectors, he must give to every person entitled to appear at the inquiry¹² not less than four weeks' written notice of the date, time and place fixed by him for the holding of an inquiry¹³. The Secretary of State may vary the date fixed for the holding of an inquiry, whether or not the date so varied is within the period mentioned in head (1) or head (2) above¹⁴, and the period of notice¹⁵ applies to a date so varied as it applied to the date originally fixed¹⁶. The Secretary of State may also vary the time or place for the holding of an inquiry and must give such notice of any such variation as appears to him to be reasonable¹⁷.

The Secretary of State may require the applicant to take one or more of the following steps¹⁸:

- 375 (a) to cause to be published not less than 14 days before the date fixed for holding the inquiry a notice of the inquiry in one or more newspapers circulating in each of the localities through which the proposed pipeline¹⁹ is to run²⁰;
- 376 (b) to serve within such period as he may specify notice of the inquiry on such persons or classes of persons as he may specify²¹; and
- 377 (c) within such period as he may specify, to post a notice of the inquiry in conspicuous places near to the route of the proposed pipeline²².

Any notice of the inquiry so published, served or posted must specify the date and time of the inquiry and the full address of where it is to be held, clearly identify the route of the pipeline and specify the powers enabling the Secretary of State to determine the application²³. Where a pre-inquiry meeting is held²⁴, an inspector must, so far as is reasonably practicable, and, in any other case may, arrange a time-table for the proceedings at, or at any part of, an inquiry and may at any time vary the time-table²⁵.

Each of: (i) the applicant²⁶; (ii) any person who, having notified the Secretary of State of his intention or wish to appear at the inquiry, has been required in writing by the Secretary of State to comply with the necessary requirements²⁷; and (iii) any statutory objector²⁸, must serve²⁹ a statement of case³⁰ on each of the others and on the Secretary of State³¹. A statement of case required to be served by the applicant and any statutory objector must be served not later than six weeks after the relevant date, or, in any case where the Secretary of State or the inspector causes a pre-inquiry meeting to be held, four weeks after the conclusion of that meeting³². Any other statement of case must be served not later than four weeks after the date of the Secretary of State's notice requiring it to be served³³.

The Secretary of State must inform any person from whom he requires a statement of case in accordance with head (ii) above of the name and address of every person on whom the statement of case is required to be served³⁴. The Secretary of State or the inspector may require any person who has served a statement of case in accordance with this provision to provide each of those on whom a statement of case has been served, the Secretary of State and the inspector with such further information about the matters contained in the statement as he may specify³⁵. Any such further information must be served not later than four weeks after the date of the Secretary of State's notice requiring it to be served³⁶. Any person serving a statement of case must serve with it a copy of any document³⁷, or the relevant part of any document, referred to in it³⁸.

Where the Secretary of State considers it expedient, having regard to the number of statutory objectors and the length of a statement of case, he may authorise any person required to serve a statement of case under head (ii) above to serve it only on the applicant and himself, and, where the Secretary of State so authorises he must make arrangements for notice to be given to the applicant and any statutory objectors, stating the times and places at which they may examine the statement of case and, where practicable, take copies of it³⁹.

Where the Secretary of State appoints an assessor⁴⁰ to sit at an inquiry, he must notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the inspector⁴¹.

1 As to the Secretary of State see PARA 555 ante.

2 For the meaning of 'applicant' see PARA 603 note 4 ante.

3 For the meaning of 'statutory objector' see PARA 603 note 4 ante.

4 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 4(1). In addition, the Secretary of State may cause a pre-inquiry meeting to be held if it appears to him desirable: see r 4(2); and PARA 603 ante. For the meaning of 'pre-inquiry meeting' see PARA 603 note 2 ante.

5 As to the application of the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended) in relation to inquiries see PARA 602 ante.

6 Ibid r 9(1)(a). For the meaning of 'relevant date' see PARA 603 note 12 ante.

7 For the meaning of 'inspector' see PARA 603 note 21 ante.

8 See note 4 supra.

9 Ie to be held pursuant to the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 4(2) or r 5(1) (see PARA 603 ante): see r 9(1)(b).

10 Ibid r 9(1)(b).

11 Ibid r 9(2).

12 For the meaning of 'person entitled to appear at an inquiry' see PARA 606 post.

13 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 9(3).

14 Ie the period mentioned in ibid r 9(1) (see the text and notes 5-10 supra): see r 9(4).

15 Ie ibid r 9(3) (see the text and notes 12-13 supra): see r 9(4).

16 Ibid r 9(4).

17 Ibid r 9(5).

18 Ibid r 9(6).

19 As to pipelines see PARA 559 ante.

- 20 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 9(6)(a).
- 21 Ibid r 9(6)(b).
- 22 Ibid r 9(6)(c).
- 23 Ibid r 9(7).
- 24 See PARA 603 ante.
- 25 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 6.
- 26 Ibid r 7(1)(a).
- 27 Ibid r 7(1)(b). The text refers to compliance with r 7(1): see r 7(1)(b).
- 28 Ibid r 7(1)(c).
- 29 Notices or documents required or authorised to be served or sent may be sent by post: *ibid* r 19.
- 30 For these purposes, 'statement of case' means a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry and a list of any documents which that person intends to refer to or put in evidence: *ibid* r 2(1).
- 31 Ibid r 7(1). Rule 7(1) is subject to r 7(4) (see note 33 *infra*) and r 7(7) (see the text and note 36 *infra*): see r 7(1).
- 32 Ibid r 7(2).
- 33 Ibid r 7(3). The statement of case mentioned in r 7(1) (see notes 26-31 *supra*) or, as the case may be, r 7(3), must be served no later than the day which is four weeks before the date fixed for the holding of the inquiry, where that day falls within whichever of the periods mentioned in either of those provisions is applicable to the case: r 7(4).
- 34 Ibid r 7(5).
- 35 Ibid r 7(6).
- 36 Ibid r 7(7).
- 37 For these purposes, 'document' includes a photograph, map or plan: *ibid* r 2(1).
- 38 Ibid r 7(8).
- 39 Ibid r 7(9).
- 40 For these purposes, 'assessor' means a person appointed by the Secretary of State to sit with an inspector at an inquiry or a re-opened inquiry to advise the inspector on such matters as the Secretary of State may specify: *ibid* r 2(1).
- 41 Ibid r 8.

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605. Proofs of evidence.

Where a person entitled to appear at an inquiry¹ proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, he must send a copy of the proof to the inspector² together with a written summary³. However, no written summary is required where the proof of evidence proposed to be read contains no more than 1,500 words⁴.

The proof and any summary must be sent to the inspector not later than: (1) three weeks before the date fixed for the holding of the inquiry⁵; or (2) where a time-table has been arranged⁶ which specifies a date by which the proof and any summary are to be sent to the inspector, that date⁷. Where the applicant⁸ or any statutory objector⁹ sends such a copy of a proof to the inspector, with or without a summary, he must at the same time send a copy of that proof and any summary to the other parties¹⁰; and where any other party so listed¹¹ so sends a copy of such documents he must at the same time send a copy to the applicant and any (or any other) statutory objector¹². Where a written summary is so provided, only that summary is read at the inquiry, unless the inspector permits or requires otherwise¹³.

Any person so required to send a copy of a proof to any other person must send with it a copy of the whole (or the relevant part) of any documents referred to in it, unless a copy of the document (or part of the document in question) is already available for inspection¹⁴. The applicant and the relevant planning authority¹⁵ must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any document sent¹⁶ to or by them¹⁷.

1 For the meaning of 'person entitled to appear at an inquiry' see PARA 606 post. As to the application of the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended), in relation to inquiries see PARA 602 ante.

2 For the meaning of 'inspector' see PARA 603 note 21 ante.

3 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 12(1).

4 Ibid r 12(2).

5 Ibid r 12(3)(a).

6 Ie arranged pursuant to ibid r 6 (see PARA 604 ante); see r 12(3)(b).

7 Ibid r 12(3)(b).

8 For the meaning of 'applicant' see PARA 603 note 4 ante.

9 For the meaning of 'statutory objector' see PARA 603 note 4 ante.

10 Ie the other parties set out in the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 7(1) (see PARA 604 ante); and r 10(1) (see PARA 603 ante); see r 12(4).

11 Ie listed in ibid r 7(1) (see PARA 604 ante); and r 10(1) (see PARA 603 ante); see r 12(4).

12 Ibid r 12(4).

13 Ibid r 12(5).

14 Ibid r 12(6). The text refers to a document (or part of the document in question) which is already available for inspection pursuant to r 7(9) (see PARA 604 ante): see r 12(6).

15 For the meaning of 'relevant planning authority' see PARA 603 note 4 ante.

16 Ie any document sent to or by them in accordance with the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 12: r 12(7).

17 Ibid r 12(7).

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606. Procedure at the inquiry.

The persons entitled to appear at an inquiry¹ are:

- 378 (1) the applicant²;
 - 379 (2) any statutory objector³;
 - 380 (3) the relevant planning authority⁴;
 - 381 (4) any of the following bodies if the route of the proposed pipeline⁵ runs through land situated in their area and they are not the relevant planning authority:
- 1190
- 9. (a) a county, county borough or district council (including the council of the Isles of Scilly)⁶;
 - 10. (b) a joint planning board constituted under the Town and Country Planning Act 1990⁷;
 - 11. (c) an urban development corporation established under the Local Government, Planning and Land Act 1980⁸;
- 1191
- 382 (5) where land along the route of the proposed pipeline is an area designated as a new town, the development corporation for the new town or the Commission for the New Towns as its successor⁹;
 - 383 (6) any other person who has served a statement of case¹⁰ or who has served an outline statement¹¹.

Nothing in heads (1) to (6) above prevents the inspector¹² from permitting any other person to appear at an inquiry, and such permission must not unreasonably be withheld¹³; and any person entitled or permitted to appear may do so on his own behalf or be represented by counsel, solicitor or any other person¹⁴. An inspector may allow one or more persons to appear for the benefit of some or all of any persons having a similar interest in the matter under inquiry¹⁵.

Where a government department has expressed a view that the application should not be granted either wholly or in part, or should be granted only subject to conditions¹⁶, and the Secretary of State¹⁷ has included its terms in a statement served¹⁸, a representative of the government department concerned must be made available to attend the inquiry¹⁹. A person attending an inquiry as such a representative must state the reasons for the expression of the view in question and must give evidence and be subject to cross-examination to the same extent as any other witness²⁰. However, this does not require a representative of a government department to answer any question which in the opinion of the inspector is directed to the merits of government policy²¹.

Unless in any particular case the inspector with the consent of the applicant otherwise determines, the applicant begins and has the right of final reply; and other persons entitled or permitted to appear are to be heard in such order as the inspector may determine²². A person entitled to appear at an inquiry is entitled to call evidence and the applicant, the relevant planning authority and any statutory objector are entitled to cross-examine any person giving evidence but²³ the calling of evidence and the cross-examination of persons giving evidence is otherwise at the inspector's discretion²⁴.

The inspector may refuse to permit: (i) the giving or production of evidence²⁵; (ii) the cross-examination of persons giving evidence²⁶; or (iii) the presentation of any other matter²⁷, which he considers to be irrelevant or repetitious; but where he so refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any written evidence or other matter in writing before the close of the inquiry²⁸.

Where a person gives evidence at an inquiry by reading a summary of his evidence²⁹, the proof of evidence³⁰ is, unless the person required to supply the summary notifies the inspector that he now wishes to rely on the contents of that summary only, to be treated as tendered in evidence, and the person whose evidence the proof contains is then subject to cross-examination on it to the same extent as if it were evidence he had given orally³¹.

The inspector may require any person appearing or present at the inquiry who, in his opinion, is behaving in a disruptive manner to leave it and may refuse to permit that person to return, or may permit him to return only on such conditions as he may specify; but any such person may submit to him any written evidence or other matter in writing before the close of the inquiry³². The inspector may allow any person to alter or add to a statement of case duly served³³ so far as may be necessary for the purposes of the inquiry; but he must, if necessary by adjourning the inquiry, give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any fresh matter or document³⁴. He may also direct that facilities are to be afforded to any person appearing at the inquiry to take or obtain copies of documentary evidence open to public inspection³⁵.

The inspector may proceed with an inquiry in the absence of any person entitled to appear at it³⁶. He may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided he discloses it at the inquiry³⁷. He may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is required³⁸.

Except as otherwise provided in the Pipe-lines (Inquiries Procedure) Rules 1995³⁹, the inspector is to determine the procedure at the inquiry⁴⁰.

1 As to the application of the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended), in relation to inquiries see PARA 602 ante.

2 Ibid rr 2(1), 10(1)(a). For the meaning of 'applicant' see PARA 603 note 4 ante.

3 Ibid rr 2(1), 10(1)(b). For the meaning of 'statutory objector' see PARA 603 note 4 ante.

4 Ibid rr 2(1), 10(1)(c). For the meaning of 'relevant planning authority' see PARA 603 note 4 ante.

5 As to pipelines see PARA 559 ante.

6 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, rr 2(1), 10(1)(d)(i) (amended by SI 1996/1008). As to local government areas and authorities in England and Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

7 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, rr 2(1), 10(1)(d)(iii) (amended by SI 1997/712). The joint planning boards referred to are those constituted under the Town and Country Planning Act 1990 s 2(1) (as amended); or s 2(1B) (as added) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 30): see the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 10(1)(d)(iii) (as so amended).

8 Ibid rr 2(1), 10(1)(d)(iv). The urban development corporations referred to are those established under the Local Government, Planning and Land Act 1980 s 135 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1428, 1436): see the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 10(1)(d)(iv).

9 Ibid rr 2(1), 10(1)(e). As to the Commission for the New Towns see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1383 et seq.

10 Ie in accordance with ibid r 7(1)(b) (see PARA 604 ante): see r 10(1)(f).

- 11 Ibid rr 2(1), 10(1)(f). The outline statement referred to is an outline statement in accordance with r 4(7) (see PARA 603 ante): r 10(1)(f).
- 12 For the meaning of 'inspector' see PARA 603 note 21 ante.
- 13 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, rr 2(1), 10(2).
- 14 Ibid rr 2(1), 10(3).
- 15 Ibid rr 2(1), 10(4).
- 16 Ie a view such as is mentioned in ibid r 4(3) (see PARA 603 ante): see r 11(1).
- 17 As to the Secretary of State see PARA 555 ante.
- 18 Ie served in accordance with the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 4(3) (see PARA 603 ante) or r 7(5) (see PARA 604 ante): see r 11(1).
- 19 Ibid r 11(1).
- 20 Ibid r 11(2).
- 21 Ibid r 11(3). As to the evidence given at an inquiry by reading a proof of evidence see r 12 (see PARA 605 ante); and r 13(5) (see the text and notes 29-31 infra).
- 22 Ibid r 13(2).
- 23 Ie subject to ibid r 13(4) (see the text and notes 25-28 infra) and r 13(5) (see the text and notes 29-31 infra): see r 13(3).
- 24 Ibid r 13(3).
- 25 Ibid r 13(4)(a).
- 26 Ibid r 13(4)(b).
- 27 Ibid r 13(4)(c).
- 28 Ibid r 13(4).
- 29 Ie in accordance with ibid r 12(5) (see PARA 605 ante): see r 13(5).
- 30 Ie referred to in ibid r 12(1) (see PARA 605 ante): see r 13(5).
- 31 Ibid r 13(5).
- 32 Ibid r 13(7).
- 33 Ie served under ibid r 7 (see PARA 604 ante): see r 13(8).
- 34 Ibid r 13(8).
- 35 Ibid r 13(6).
- 36 Ibid r 13(9).
- 37 Ibid r 13(10).
- 38 Ibid r 13(11).
- 39 Ie the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended): see r 13(1).
- 40 Ibid r 13(1).

UPDATE

606 Procedure at the inquiry

TEXT AND NOTE 9--SI 1995/1239 r 10(1)(e) amended: SI 2008/2831.

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607. Site inspections.

The inspector¹ may make an unaccompanied inspection of the route of the proposed pipeline² before or during an inquiry³ without giving notice of his intention to the persons entitled to appear at the inquiry⁴. He may, during an inquiry or after its close, inspect the route of the proposed pipeline in the presence of (1) the applicant⁵; (2) the relevant planning authority⁶; and (3) any statutory objector⁷; and he must make such an inspection if he is so requested by the applicant or the relevant planning authority before or during an inquiry⁸. In all cases where the inspector intends to make such an inspection, he must announce during the inquiry the date and time at which he proposes to make it⁹. The inspector is not bound to defer such an inspection where any person mentioned in heads (1) to (3) above is not present at the time appointed¹⁰.

1 For the meaning of 'inspector' see PARA 603 note 21 ante.

2 As to pipelines see PARA 559 ante.

3 As to the application of the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended), in relation to inquiries see PARA 602 ante.

4 Ibid r 14(1). For the meaning of 'person entitled to appear at an inquiry' see PARA 606 ante.

5 Ibid r 14(2). For the meaning of 'applicant' see PARA 603 note 4 ante.

6 Ibid r 14(2). For the meaning of 'relevant planning authority' see PARA 603 note 4 ante.

7 Ibid r 14(2). The presence of any statutory objector is subject to r 14(3) (see note 8 infra): see r 14(2). For the meaning of 'statutory objector' see PARA 603 note 4 ante.

8 Ibid r 14(2). Where the inspector inspects the proposed route of the pipeline after the close of an inquiry, a statutory objector is only entitled to accompany him on that inspection if he appeared at the inquiry: r 14(3).

9 Ibid r 14(4).

10 Ibid r 14(5).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(4) INQUIRIES AND HEARINGS/608. Procedure after the inquiry.

608. Procedure after the inquiry.

After the close of an inquiry¹, the inspector² must make a report in writing to the Secretary of State³ which includes his conclusions and recommendations or his reasons for not making any recommendation⁴. Where an assessor⁵ has been appointed, he may, after the close of an inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise⁶. Where he makes such a report, the inspector must append it to his own report and must state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement⁷.

If, after the close of the inquiry, the Secretary of State:

- 384 (1) differs from the inspector on any matter of fact mentioned in (or appearing to him to be material to) a conclusion reached by the inspector⁸; or
- 385 (2) takes into consideration any new evidence or new matter of fact (not being a matter of government policy)⁹,

and is by reason thereof disposed to disagree with a recommendation made by the inspector, he must not come to a decision which is at variance with that recommendation without first notifying the persons entitled to appear at the inquiry¹⁰ who appeared at it of his disagreement and the reasons for it, and affording them an opportunity of making written representations to him within three weeks of the date of notification, or (if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of government policy) an opportunity of asking within that period for the re-opening of the inquiry¹¹.

The Secretary of State may, as he thinks fit, cause an inquiry to be re-opened to afford an opportunity for persons to be heard on such matters relating to an application as he may specify, and he must do so if asked to do so by the applicant¹², the relevant planning authority¹³, any statutory objector¹⁴ or any other person entitled to appear at an inquiry¹⁵ and in the circumstances and within the period so mentioned¹⁶. Where an inquiry is re-opened, whether by the same or a different inspector, the Secretary of State must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters specified¹⁷.

The Secretary of State must notify his decision on an application and his reasons for it in writing to all persons entitled to appear at the inquiry who did appear at it and any other person who, having appeared at the inquiry, has asked to be notified of the decision¹⁸. Where a copy of the inspector's report¹⁹ is not sent with the notification of the decision, the notification is to be accompanied by a statement of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he is to be supplied with a copy of it on written application made to the Secretary of State within four weeks from the date of the decision²⁰.

Where a decision of the Secretary of State on an application in respect of which an inquiry has been held is quashed in proceedings before any court, the Secretary of State: (a) must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters which appear to him to be relevant to his further consideration of the application²¹; (b) must afford to those persons an opportunity of making, within three weeks of the date of such written statement, written representations to him in respect of such matters or of asking for the

re-opening of the inquiry²²; and (c) may, as he thinks fit, cause the inquiry to be re-opened, whether by the same or a different inspector²³.

The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be done by virtue of the Pipe-lines (Inquiries Procedure) Rules 1995²⁴, and references to a day by which or a period within which any step is required or enabled to be taken are to be construed accordingly²⁵.

1 As to inquiries, and as to the application of the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended) in relation to inquiries, see PARA 602 et seq ante.

2 For the meaning of 'inspector' see PARA 603 note 21 ante.

3 As to the Secretary of State see PARA 555 ante.

4 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 15(1).

5 For the meaning of 'assessor' see PARA 604 note 40 ante.

6 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 15(2).

7 Ibid r 15(3).

8 Ibid r 15(4)(a).

9 Ibid r 15(4)(b).

10 For the meaning of 'person entitled to appear at an inquiry' see PARA 606 ante.

11 Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 15(4).

12 For the meaning of 'applicant' see PARA 603 note 4 ante.

13 For the meaning of 'relevant planning authority' see PARA 603 note 4 ante.

14 For the meaning of 'statutory objector' see PARA 603 note 4 ante.

15 Ie any other person mentioned in the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 10(1) (see PARA 603 ante) pursuant to r 15(4) (see the text and notes 8-11 supra): see r 15(5).

16 Ibid r 15(5). The period mentioned is that in r 15(4) (see the text and notes 8-11 supra): see r 15(5).

17 Ibid r 15(5)(a). The matters referred to are those pursuant to r 15(5): r 15(5). Rule 9(3)-(7) (see PARA 604 ante) applies as if the references to an inquiry were references to a re-opened inquiry: r 15(5)(b).

18 Ibid r 16(1).

19 For these purposes, 'report' includes any assessor's report appended to the inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Secretary of State in writing, within six weeks of the date of the Secretary of State's decision, for an opportunity of inspecting any such documents and the Secretary of State must afford him that opportunity: ibid r 16(3).

20 Ibid r 16(2).

21 Ibid r 17(1)(a).

22 Ibid r 17(1)(b).

23 Ibid r 17(1)(c). If the Secretary of State does so, r 9(3)-(7) (see PARA 604 ante) applies as if the references to an inquiry were references to a re-opened inquiry: see r 17(1)(c).

24 Ie the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239 (as amended): see r 18.

25 Ibid r 18. The Pipe-lines (Inquiries Procedure) Rules 1967, SI 1967/1769 (revoked), continue to apply both to any inquiry which commenced before 1 June 1995 (the date on which the Pipe-lines (Inquiries Procedure)

Rules 1995, SI 1995/1239, came into force: see r 1) and to any inquiry re-opened under the Pipe-lines (Inquiries Procedure) Rules 1967, SI 1967/1769, r 9(4) (revoked), and for the purposes of the Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 20 (as amended) an inquiry is taken to have commenced on the day on which the Secretary of State issued the relevant notice under the Pipe-lines (Inquiries Procedure) Rules 1967, SI 1967/1769 (revoked), of his intention to cause the inquiry to be held: Pipe-lines (Inquiries Procedure) Rules 1995, SI 1995/1239, rr 1, 20(2).

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(5) SAFETY REQUIREMENTS

609. Statutory provisions and regulations.

The Health and Safety at Work etc Act 1974 provides a comprehensive and integrated system of law dealing with the health, safety and welfare of people at work and of the public in relation to work activities¹. Accordingly, that Act affects the provisions of numerous other Acts, including the Pipe-lines Act 1962². The Health and Safety at Work etc Act 1974 also provides for the making of health and safety regulations³, and for the preparation and approval of codes of practice⁴, with a view to enabling the Pipe-lines Act 1962 and other specified enactments⁵ to be replaced by a system of regulations and approved codes of practice operating in combination with other provisions of the Health and Safety at Work etc Act 1974, and designed to improve standards of health, safety and welfare established by or under those enactments⁶.

¹ See the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 et seq.

² The provisions of the Pipe-lines Act 1962 which are affected are ss 20-26 (repealed); ss 27-34 (repealed); s 37 (as amended) (see PARA 617 post); s 42 (repealed); s 58A (as added and amended) (see PARA 560 note 9 ante); Sch 5 (repealed): see the Health and Safety at Work etc Act 1974 s 1(2) (as amended); Sch 1 (amended by virtue of the Gas Act 1995 s 16(1), Sch 4 para 10; and the Offshore Safety Act 1992 ss 1(1), (3), 2(1), (3)); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

The provisions of the Health and Safety at Work etc Act 1974 Pt I (as amended) (see HEALTH AND SAFETY AT WORK vol 32 (2009) PARA 302 et seq) have effect as if the Pipe-lines Act 1962 s 37 (as amended) was an existing statutory provision within the meaning of the Health and Safety at Work etc Act 1974 Pt I (as amended): see the Offshore Safety Act 1992 s 2 (as amended). The Offshore Safety Act 1992 s 2(3)(a) originally included the Pipe-lines Act 1962 ss 27-32 (repealed). These provisions were repealed by the Pipelines Safety Regulations 1996, SI 1996/825, reg 30. As to requirements relating to pipelines for the purposes of health and safety see the Pipelines Safety Regulations 1996, SI 1996/825 (as amended); and PARA 610 et seq post.

³ See the Health and Safety at Work etc Act 1974 s 15 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424-425. As to the regulations made see the Pipelines Safety Regulations 1996, SI 1996/825 (as amended); and PARA 610 et seq post.

⁴ See the Health and Safety at Work etc Act 1974 s 16 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 426.

⁵ Ie the enactments specified in the Health and Safety at Work etc Act 1974 Sch 1 (as amended): see s 1(2) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

⁶ See *ibid* s 1(2) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302. As to the prohibition on the use or testing of a pipeline unless funds are available to cover any damage caused by the release or escape of anything from the pipeline see the Pipe-lines Act 1962 s 26A (as added); and PARA 618 post.

UPDATE

609-610 Statutory provisions and regulations, Application of the health and safety provisions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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610. Application of the health and safety provisions.

The Pipelines Safety Regulations 1996¹ apply in Great Britain² and to (and in relation to) pipelines³ and activities outside Great Britain to which specified provisions of the Health and Safety at Work etc Act 1974⁴ apply⁵. However, the Pipelines Safety Regulations 1996 do not apply to any pipeline (or part of a pipeline) of a kind which is described as follows⁶:

- 386 (1) a pipeline for the conveyance of air, water vapour or steam⁷;
- 387 (2) a pipeline for the conveyance of water, other than for the purpose of injecting water into an underwater well or reservoir containing mineral resources⁸;
- 388 (3) a pipeline contained wholly within the premises occupied by a single undertaking⁹;
- 389 (4) a pipeline which is contained wholly within land which constitutes a railway asset¹⁰;
- 390 (5) a pipeline contained wholly within a caravan site¹¹.

1 Ie the Pipelines Safety Regulations 1996, SI 1996/825 (as amended): see reg 4(1). As to transitional provisions see reg 27.

2 For the meaning of 'Great Britain' see PARA 29 note 3 ante.

3 For the meaning of 'pipeline' for these purposes see PARA 611 note 2 post.

4 Ie the provisions of the Health and Safety at Work etc Act 1974 ss 1-59 (as amended), ss 80-82 (as amended) (see generally HEALTH AND SAFETY AT WORK): see the Pipelines Safety Regulations 1996, SI 1996/825, reg 4(1).

5 Ibid reg 4(1). The specified provisions apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 6 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 305): see the Interpretation Act 1978 s 17(2); Pipelines Safety Regulations 1996, SI 1996/825, reg 4(1).

In the case of a pipeline to which the Pressure Systems Safety Regulations 2000, SI 2000/128 (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 544 et seq), apply, nothing in the Pipelines Safety Regulations 1996, SI 1996/825 (as amended), requires the taking of any measures to the extent that they are for the prevention of danger within the meaning of the Pressure Systems Safety Regulations 2000, SI 2000/128 (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 545): Interpretation Act 1978 s 17(2); Pipelines Safety Regulations 1996, SI 1996/825, reg 4(3).

6 Ibid reg 4(2).

7 Ibid reg 4(2), Sch 1 para 1.

8 Ibid Sch 1 para 2.

9 Ibid Sch 1 para 3.

10 Ibid Sch 1 para 4. A railway asset is a railway asset within the meaning of the Railways Act 1993 s 6(2) (see PARA 83 note 7 ante): see the Pipelines Safety Regulations 1996, SI 1996/825, Sch 1 para 4.

11 Ibid Sch 1 para 5. 'Caravan' and 'caravan site' have the same meanings as they have in the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-30) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1032 et seq): Pipelines Safety Regulations 1996, SI 1996/825, Sch 1 para 6.

UPDATE

609-610 Statutory provisions and regulations, Application of the health and safety provisions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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611. General safety requirements.

The operator¹ of a pipeline² must ensure:

- 391 (1) that no fluid³ is conveyed in a pipeline unless it has been so designed that, so far as is reasonably practicable, it can withstand forces arising from its operation, the fluids that may be conveyed in it, and the external forces and the chemical processes to which it may be subjected⁴;
- 392 (2) that no fluid is conveyed in a pipeline unless it has been provided with such safety systems as are necessary for securing that, so far as is reasonably practicable, persons are protected from risk to their health or safety⁵;
- 393 (3) that no fluid is conveyed in a pipeline unless it has been so designed that, so far as is reasonably practicable, it may be examined and work of maintenance may be carried out safely⁶;
- 394 (4) that no fluid is conveyed in a pipeline unless it is composed of materials which are suitable⁷;
- 395 (5) that no fluid is conveyed in a pipeline (save for the purpose of testing it) unless it has been so constructed and installed that, so far as is reasonably practicable, it is sound and fit for the purpose for which it has been designed⁸;
- 396 (6) that modification, maintenance or other work on a pipeline is carried out in such a way that its soundness and fitness for the purpose for which it has been designed will not be prejudiced⁹;
- 397 (7) that no fluid is conveyed in a pipeline unless the safe operating limits of the pipeline have been established; and a pipeline is not operated beyond its safe operating limits, save for the purpose of testing it¹⁰;
- 398 (8) that no fluid is conveyed in a pipeline unless adequate arrangements have been made for dealing with an accidental loss of fluid from, discovery of a defect in or damage to, or other emergency affecting, the pipeline¹¹;
- 399 (9) that a pipeline is maintained in an efficient state, in efficient working order and in good repair¹²;
- 400 (10) that a pipeline which has ceased to be used for the conveyance of any fluid is left in a safe condition¹³, and that work done in discharge of such a duty¹⁴ is performed safely¹⁵.

No person may cause such damage to a pipeline as may give rise to a danger to persons¹⁶. For the purpose of ensuring that no damage is caused to a pipeline, the operator must take such steps to inform persons of its existence and whereabouts as are reasonable¹⁷. Where there are different operators for different parts of a pipeline, each operator must co-operate with the other so far as is necessary to enable the operators to comply with the requirements of the Pipelines Safety Regulations 1996¹⁸.

1 'Operator', in relation to a pipeline, means: (1) the person who is to have or (once fluid is conveyed) has control over the conveyance of fluid in the pipeline; (2) until that person is known (should there be a case where at a material time he is not yet known) the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; (3) when a pipeline is no longer, or is not for the time being used, the person last having control over the conveyance of fluid in it: Pipelines Safety Regulations 1996, SI 1996/825, reg 2(1). For these purposes, 'pipeline' is to be construed in accordance with reg 3 (see note 2 infra): reg 2(1).

2 'Pipeline' means a pipe or system of pipes (together with any apparatus and works, of a kind described in ibid reg 3(2), associated with it) for the conveyance of any fluid, not being (1) a drain or sewer; (2) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes; (3) a pipe (not being apparatus described in head (e) infra) which is used in the control or monitoring of any plant: reg 3(1). The apparatus and works referred to in reg 3(1) are: (a) any apparatus for inducing or facilitating the flow of any fluid through, or through a part of, the pipe or system; (b) any apparatus for treating or cooling any fluid which is to flow through, or through part of, the pipe or system; (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system; (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (a)-(c) supra; (e) apparatus for the transmission of information for the operation of the pipe or system; (f) apparatus for the cathodic protection of the pipe or system; and (g) a structure used or to be used solely for the support of a part of the pipe or system: reg 3(2). For the purpose of head (c) supra, a valve, valve chamber or similar work is deemed to be annexed to, or incorporated in the course of, a pipe or system where it connects the pipe or system to plant, an offshore installation, or a well: reg 3(3). A pipeline for supplying gas to premises is deemed not to include anything downstream of an emergency control: reg 3(4). 'Emergency control' means a valve for shutting off the supply of gas in an emergency, being a valve intended for use by a consumer of gas; and 'gas' has the same meaning as it has in the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 802): Pipelines Safety Regulations 1996, SI 1996/825, reg 3(5).

As to pipelines to which the Pipelines Safety Regulations 1996, SI 1996/825, do not apply see Sch 1; and PARA 610 ante.

3 'Fluid' includes a mixture of fluids: ibid reg 2(1). As to descriptions of dangerous fluids (which can include a gas) see PARA 612 note 2 post.

4 Ibid reg 5.

5 Ibid reg 6.

6 Ibid reg 7.

7 Ibid reg 8.

8 Ibid reg 9.

9 Ibid reg 10.

10 Ibid reg 11.

11 Ibid reg 12.

12 Ibid reg 13.

13 Ibid reg 14(1). As to programmes for the decommissioning of any description of iron (not including steel) pipe used in a pipeline see reg 13A (added by SI 2003/2563). The Health and Safety Executive must give written approval for any such programme, prepared either by an operator or by itself: see the Pipelines Safety Regulations 1996, SI 1996/825, reg 13A (as so added).

14 Ie the duty contained in ibid reg 14(1): see reg 14(2).

15 Ibid reg 14(2).

16 Ibid reg 15.

17 Ibid reg 16.

18 Ibid reg 17.

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612. Emergency shut-down valves.

The operator¹ of a major accident hazard pipeline² which is connected to an offshore installation, and has an internal diameter of 40 millimetres or more, must ensure that certain requirements³ are complied with in relation to the pipeline⁴. The duty holder⁵ in relation to an offshore installation to which a pipeline is connected, must afford, or cause to be afforded, to the operator of the pipeline such facilities as he may reasonably require for the purpose of securing that the requirements are complied with in relation to the pipeline⁶.

An emergency shut-down valve⁷ must be incorporated in the riser of a pipeline in a position in which it can be safely inspected, maintained and tested, and as far down the riser as is reasonably practicable⁸. An emergency shut-down valve must be held open by an electrical, hydraulic or other signal to the mechanism for actuating the valve on the failure of which signal the valve must automatically close⁹. An emergency shut-down valve must also be capable of being closed by a person positioned by it, and automatically by the operation of the emergency shut-down system¹⁰ of the offshore installation to which the pipeline is connected, or, while relevant work of examination or maintenance is being carried out, by one of those means¹¹. If the pipeline is designed to allow for the passage of equipment for inspecting, maintaining or testing the pipeline, the emergency shut-down valve must also be designed to allow for such passage¹². An emergency shut-down valve and its actuating mechanism must so far as is reasonably practicable be protected from damage arising from fire, explosion or impact¹³. An emergency shut-down valve must be maintained in an efficient state, in efficient working order and in good repair¹⁴. After an emergency shut-down valve has operated so as to block the flow of fluid within the pipeline it must not be re-opened so as to permit the flow of fluid until steps have been taken to ensure that it is safe to do so¹⁵.

1 For the meaning of 'operator' see PARA 611 note 1 ante.

2 The provisions contained in the Pipelines Safety Regulations 1996, SI 1996/825, regs 19-27 apply in relation to a pipeline in which a dangerous fluid is being, or is to be conveyed (a 'major accident hazard pipeline'): reg 18(1). For these purposes, a 'dangerous fluid' is:

- 9 (1) a fluid which is flammable in air, has a boiling point below 5°C, at 1 bar absolute, and is or is to be conveyed in the pipeline as a liquid (reg 18(2), Sch 2 para 1);
- 10 (2) a fluid which is flammable in air and is or is to be conveyed in the pipeline as a gas at above 8 bar absolute (Sch 2 para 2);
- 11 (3) a liquid which has a vapour pressure greater than 1.5 bar absolute when in equilibrium with its vapour at either the actual temperature of the liquid or at 20°C (Sch 2 para 3);
- 12 (4) a toxic or very toxic fluid which is a gas at 20°C and 1 bar absolute, and is, or is to be, conveyed as a liquid or a gas (Sch 2 para 4);
- 13 (5) a toxic fluid which at 20°C has a saturated vapour pressure greater than 0.4 bar, and is, or is to be, conveyed in the pipeline as a liquid (Sch 2 para 5);
- 14 (6) acrylonitrile (Sch 2 para 6);
- 15 (7) a very toxic fluid which at 20°C has a saturated vapour pressure greater than 0.001 bar, or is, or is to be, conveyed in the pipeline as a liquid at a pressure greater than 4.5 bar absolute (Sch 2 para 7);

16 (8) an oxidising fluid which is, or is to be, conveyed as a liquid (Sch 2 para 8);

17 (9) a fluid which reacts violently with water (Sch 2 para 9).

For the purposes of Sch 2, a liquid is oxidising, and a fluid is toxic or very toxic, or reacts violently with water, if it has been, or is liable to be classified, pursuant to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002, SI 2002/1689, reg 4 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 571) as (as the case may be) oxidising, toxic, very toxic or as reacting violently with water: Interpretation Act 1978 s 17(2); Pipelines Safety Regulations 1996, SI 1996/825, Sch 2 para 10. As to the meaning of 'fluid' see PARA 611 note 3 ante.

3 le the requirements contained in ibid reg 19(1), Sch 3 (see the text and notes 7-15 infra): see reg 19(1).

4 Ibid reg 19(1).

5 'Duty holder', in relation to an offshore installation, means the person who is the duty holder as defined by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 SI 1995/738, reg 2(1) (definition as substituted) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1684) in relation to that installation: Pipelines Safety Regulations 1996, SI 1996/825, reg 19(3).

6 Ibid reg 19(2).

7 'Emergency shut-down valve' means a valve which is capable of adequately blocking the flow of fluid within the pipeline at the point at which it is incorporated: ibid reg 2(1).

8 Ibid Sch 3 para 1.

9 Ibid Sch 3 para 2.

10 'Emergency shut-down system' means the system comprising mechanical, electrical, electronic, pneumatic, hydraulic or other arrangements by which the plant on an offshore installation is automatically shut down in the event of an emergency: ibid Sch 3 para 8.

11 Ibid Sch 3 para 3.

12 Ibid Sch 3 para 4.

13 Ibid Sch 3 para 5.

14 Ibid Sch 3 para 6.

15 Ibid Sch 3 para 7.

UPDATE

612 Emergency shut-down valves

NOTE 2--Reference to SI 2002/1689 now to SI 2009/716: SI 1996/825 Sch 2 para 10 (amended by SI 2009/716). SI 2002/1689 replaced: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716.

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613. Construction, operation and maintenance.

The operator¹ must ensure that the construction of a major accident hazard pipeline² is not commenced unless he has notified to the Health and Safety Executive³ the specified particulars⁴ at least six months, or such shorter time as the Executive may approve, before such commencement⁵.

The operator must also ensure that no fluid⁶ is conveyed in a major accident hazard pipeline, or conveyed following a period in which it has been out of commission (other than for routine maintenance), until the expiration of 14 days, or of such shorter period as the Executive may in that case approve, from the receipt by it of a notification of the date on which it is intended to convey or, as the case may be, resume the conveyance of fluid in the pipeline⁷.

1 For the meaning of 'operator' see PARA 611 note 1 ante.

2 For the meaning of 'major accident hazard pipeline' see PARA 612 note 2 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 The particulars to be included in notification relating to construction of a major accident hazard pipeline are:

18 (1) the name and address of the operator of the pipeline (Pipelines Safety Regulations 1996, SI 1996/825, Sch 4 para 1);

19 (2) the proposed route of the pipeline in the form of maps or drawings (Sch 4 para 2);

20 (3) the proposed route of the riser on any offshore installation, in the form of drawings (Sch 4 para 3);

21 (4) the length, diameter and wall thickness of the pipeline (Sch 4 para 4);

22 (5) the materials to be used in the construction of the pipeline (Sch 4 para 5);

23 (6) the fluid to be conveyed and such of its properties as are relevant to health and safety (Sch 4 para 6);

24 (7) the safe operating limits of the pipeline (Sch 4 para 7);

25 (8) the intended temperature, pressure, and maximum rate of flow of the fluid to be conveyed (Sch 4 para 8).

5 Ibid reg 20.

6 As to the meaning of 'fluid' see PARA 611 note 3 ante.

7 Pipelines Safety Regulations 1996, SI 1996/825, reg 21.

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614. Notification and records of repairs.

Where there is a change of operator¹ of a major accident hazard pipeline², or of his address, the operator must notify such change to the Health and Safety Executive³ within 14 days thereafter⁴.

In the case of a major accident hazard pipeline the construction of which has commenced, or has been completed, the operator must ensure that no event of a certain description⁵ takes place until the expiration of three months, or such shorter time as the Executive may in that case approve, from the receipt by the Executive of the particulars so specified⁶ in relation to such event⁷. Where such an event⁸ takes place in an emergency, the operator must notify to the Executive the particulars so specified as soon as is reasonably practicable⁹.

1 For the meaning of 'operator' see PARA 611 note 1 ante.

2 For the meaning of 'major accident hazard pipeline' see PARA 612 note 2 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 Pipelines Safety Regulations 1996, SI 1996/825, reg 22(1).

5 The particulars to be notified before certain events relating to major accident hazard pipelines are:

26 (1) in relation to a change to the route or position of a pipeline, particulars in the form of maps or drawings of the new route or position (ibid Sch 5 para 1);

27 (2) in relation to a change to the safe operating limits of a pipeline, particulars of such change (Sch 5 para 2);

28 (3) in relation to the start of major modification or major remedial work to the pipeline, particulars of such work (Sch 5 para 3);

29 (4) in relation to the conveyance of a new fluid, particulars of such of its properties as are relevant to the health or safety of persons, and the intended or (if, in a case to which reg 22(3) (see the text and notes 8-9 infra) applies, conveyance has started) actual temperature, pressure and maximum rate of flow in the pipeline (Sch 5 para 4);

30 (5) in relation to the start of decommissioning or dismantlement of the pipeline, particulars of the steps to be taken or (if, in a case to which reg 22(3) applies, decommissioning or dismantlement has started) taken in connection with such decommissioning or dismantlement (Sch 5 para 5).

6 Ie specified in ibid Sch 5 (see note 5 supra): see reg 22(2).

7 Ibid reg 22(2).

8 Ie described in ibid Sch 5 (see note 5 supra): see reg 22(3).

9 Ibid reg 22(3).

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615. Means of control.

The operator¹ must, before the design of a major accident hazard pipeline² is completed, prepare, and thereafter revise or replace as often as may be appropriate, a document relating to the pipeline containing sufficient particulars to demonstrate that³:

- 401 (1) all hazards relating to the pipeline with the potential to cause a major accident have been identified⁴;
- 402 (2) the risks arising from those hazards have been evaluated⁵;
- 403 (3) the safety management system⁶ is adequate⁷; and
- 404 (4) he has established adequate arrangements for audit⁸, in respect of which reports can be made⁹.

The particulars in such a document need only demonstrate the matters referred to above to the extent that it is reasonable to expect the operator to address them at the time the document is prepared or revised¹⁰. Where the document describes any health and safety arrangements or procedures to be followed, the operator must ensure that those arrangements or procedures are followed unless in the particular circumstances of the case it is not in the best interests of the health and safety of persons to follow them, and there has been insufficient time to revise or replace the document to take account of those circumstances¹¹.

1 For the meaning of 'operator' see PARA 611 note 1 ante.

2 For the meaning of 'major accident hazard pipeline' see PARA 612 note 2 ante.

3 Pipelines Safety Regulations 1996, SI 1996/825, reg 23(1).

4 Ibid reg 23(1)(a).

5 Ibid reg 23(1)(b).

6 For these purposes, 'safety management system' means the organisation, arrangements and procedures established by the operator for ensuring that the risk of a major accident is as low as is reasonably practicable: *ibid* reg 23(4).

7 Ibid reg 23(1)(c).

8 For these purposes, 'audit' means systematic assessment of the adequacy of the safety management system, carried out by persons who are sufficiently independent of the system (but who may be employed by the operator) to ensure that such assessment is objective: *ibid* reg 23(4).

9 Ibid reg 23(1)(d).

10 Ibid reg 23(2).

11 Ibid reg 23(3).

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616. Emergency procedures.

The operator¹ must ensure that no fluid² is conveyed in a major accident hazard pipeline³ unless such appropriate organisation and arrangements as have effect, and the procedures which are to be followed in different circumstances, in the event of an emergency relating to the pipeline have been established and recorded⁴. The operator must revise or replace the record of such organisation, arrangements and procedures as often as may be appropriate⁵. The operator must ensure that such organisation, arrangements and procedures are tested, by practice or otherwise, as often as may be appropriate⁶.

A local authority⁷ which has been notified by the Health and Safety Executive⁸ that there is, or is to be a major accident hazard pipeline in its area must before the pipeline is first used or within nine months of such notification, whichever is later, prepare an adequate plan detailing how an emergency relating to a possible major accident⁹ in its area will be dealt with¹⁰. In preparing the plan a local authority must consult the operator of the pipeline, the Executive and any other persons as appear to the authority to be appropriate¹¹. A local authority which has prepared a plan must, as often as is appropriate and, in any case, at least every three years review the plan and make such revision as is appropriate¹². The operator of a major accident hazard pipeline must ensure that every local authority through whose area the pipeline will pass is furnished promptly with such information as it may reasonably require in preparing the plan¹³.

A local authority which prepares, reviews or revises a plan¹⁴ may charge a fee¹⁵ to the operator of the pipeline to which the plan relates¹⁶. The fee must not exceed the sum of the costs reasonably incurred by the local authority in preparing, reviewing or revising the plan and, where the plan covers pipelines of which there is more than one operator, the fee charged to each operator must not exceed the proportion of such sum attributable to the part or parts of the plan relating to his pipelines¹⁷. In determining the fee no account is to be taken of costs other than the costs of discharging functions in relation to those parts of the plan which relate to the protection of health or safety of persons and which were costs incurred after the coming into force of these provisions¹⁸. The local authority may determine the cost of employing a graded officer for any period on work appropriate to his grade by reference to the average cost to it of employing officers of his grade for that period¹⁹. When requiring payment the local authority must send or give to the operator of the pipeline a detailed statement of the work done and costs incurred including the date of any visit to any place and the period to which the statement relates; and the fee, which is recoverable only as a civil debt, is payable one month after the statement has been sent or given²⁰.

1 For the meaning of 'operator' see PARA 611 note 1 ante.

2 As to the meaning of 'fluid' see PARA 611 note 3 ante.

3 For the meaning of 'major accident hazard pipeline' see PARA 612 note 2 ante.

4 Pipelines Safety Regulations 1996, SI 1996/825, reg 24(1).

5 Ibid reg 24(2).

6 Ibid reg 24(3).

7 For these purposes, 'local authority' means: (1) in relation to England, a county council, a council having the functions of a county council, the London Fire and Emergency Planning Authority, a metropolitan county fire and rescue authority, or the Council for the Isles of Scilly; (2) in relation to Scotland, the council for a local government area; and (3) in relation to Wales, a county council or a county borough council: *ibid* reg 2(1) (amended by virtue of the Greater London Authority Act 1999 s 328(7); and by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 1 para 10(1), (2)). As to local government areas and authorities in England and Wales and their councils see *LOCAL GOVERNMENT* vol 69 (2009) PARAS 24 et seq, 37 et seq. As to the London Fire and Emergency Planning Authority see *FIRE SERVICES* vol 18(2) (Reissue) PARA 17; *LONDON GOVERNMENT* vol 29(2) (Reissue) PARA 217. As to metropolitan county fire and rescue authorities see *FIRE SERVICES*; *LOCAL GOVERNMENT* vol 69 (2009) PARA 48.

8 As to the Health and Safety Executive see *HEALTH AND SAFETY AT WORK* vol 52 (2009) PARA 361 et seq.

9 For these purposes, 'major accident' means death or serious injury involving a dangerous fluid: *Pipelines Safety Regulations 1996*, SI 1996/825, reg 2(1).

10 *Ibid* reg 25(1). It is deemed to be sufficient compliance with the requirement as to the time by which a plan is to be prepared, where such time is exceeded by reason of waiting for information referred to in reg 25(4) (see the text to note 13 *infra*) which has been promptly required: reg 25(5).

11 *Ibid* reg 25(2).

12 *Ibid* reg 25(3).

13 *Ibid* reg 25(4). Where a pipeline passes or is to pass through the areas of two or more local authorities the duties under reg 25 may be discharged by them where they prepare a single plan: reg 25(6).

14 *Ie* pursuant to *ibid* reg 25(1) (see the text and notes 7-10 *supra*) or reg 25(3) (see the text and note 12 *supra*): see reg 26(1).

15 *Ie* determined in accordance with *ibid* reg 26(2)-(4) (see the text and notes 17-19 *infra*): see reg 26(1).

16 *Ibid* reg 26(1).

17 *Ibid* reg 26(2).

18 *Ibid* reg 26(3).

19 *Ibid* reg 26(4).

20 *Ibid* reg 26(5).

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617. Notification to authorities of certain pipeline accidents.

It is the duty of the owner¹ of every pipeline² to make, and ensure the efficient carrying out of, arrangements so that, in the event of the accidental escape or ignition of anything in the pipeline, immediate notice³ of the event is given to⁴:

- 405 (1) every fire and rescue authority⁵ and police authority⁶ by which duties will or may fall to be discharged in consequence of the event⁷;
- 406 (2) all statutory water undertakers⁸ which, in consequence of the event, will or may have to take steps to prevent or combat pollution of water or flooding⁹;
- 407 (3) all sewerage undertakers¹⁰ which, in consequence of the event, will or may have to take steps to prevent injury to their sewers or sewage disposal works, interference with the free flow of the contents of any of their sewers or the prejudicial affection of the treatment and disposal of such contents or to combat the effects of any such injury, interference or affection¹¹; and
- 408 (4) any other authority, board or undertakers which the Health and Safety Executive¹², by notice served on the owner of the pipeline, requires him to treat, for the purposes of this provision, as relevant in relation to the pipeline, being an authority or board or undertakers, in the case of which it is stated in the notice that the Health and Safety Executive is satisfied that, in consequence of the event, they will or may have to take, in the public interest, steps for the purpose specified in the notice¹³.

If he is requested to do so by any authority, board or undertakers, it is the duty of the owner of a pipeline to furnish them with such maps and to give them such information as they may reasonably require in order to take the necessary steps after an accidental escape from or the ignition of a thing in the pipeline¹⁴.

A person who fails to satisfy an obligation to which he is subject by virtue of these provisions is guilty of an offence¹⁵.

1 For the meaning of 'owner' see PARA 557 note 7 ante.

2 For the meaning of 'pipeline' see PARA 559 ante.

3 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

4 Ibid s 37(1).

As to the exclusion of s 37 (as amended) see PARA 560 et seq ante. As to the prohibition on the use or testing of a pipeline unless funds are available to cover any damage caused by the release or escape of anything from the pipeline see s 26A (as added); and PARA 618 post. As to requirements relating to pipelines for the purposes of health and safety see the Pipelines Safety Regulations 1996, SI 1996/825 (as amended); and PARA 609 et seq ante.

5 In relation to any area, 'fire and rescue authority' means the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area (see FIRE SERVICES): Pipe-lines Act 1962 s 37(4)(a) (definition substituted by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 17(1), (3)).

6 As to police forces and authorities in police areas under the Police Act 1996 see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

7 Pipe-lines Act 1962 s 37(1)(a) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 17(1), (2)).

8 For the meaning of 'statutory water undertakers' for these purposes see PARA 591 note 8 ante.

9 Pipe-lines Act 1962 s 37(1)(b) (amended by the Water Act 1989 s 190(1), Sch 25 para 30(1)).

10 For these purposes, 'sewerage undertaker', in relation to England and Wales, is to be construed in accordance with the Water Industry Act 1991 s 6 (as amended) (appointment of relevant undertakers): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Water Act 1989 Sch 25 para 55(1), (2); and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 32). For the meanings of 'England' and 'Wales' see PARA 29 note 3 ante. As to the appointment of sewerage undertakers under the Water Industry Act 1991 s 6 (as amended) see WATER AND WATERWAYS vol 100 (2009) PARA 137.

11 Pipe-lines Act 1962 s 37(1)(c) (amended by the Water Act 1989 Sch 25 para 30(1)).

12 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

13 Pipe-lines Act 1962 s 37(1)(d) (amended by virtue of the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 4(1)).

14 Pipe-lines Act 1962 s 37(2). The maps and information are such as are reasonably required by:

- 31 (1) a fire and rescue authority or police authority, to enable it efficiently to discharge the duties falling to be discharged by it in consequence of the event (s 37(2)(a) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 17(1), (2)));
- 32 (2) any statutory water undertakers to enable them efficiently to take steps to prevent or combat pollution of water or flooding in consequence of the event (Pipe-lines Act 1962 s 37(2)(b) (37(2)(b), (c) amended by the Water Act 1989 Sch 25 para 30(1)));
- 33 (3) a sewerage undertaker, to enable it efficiently to take steps for either of the purposes mentioned in the Pipe-lines Act 1962 s 37(1)(c) (as amended) (see head (3) in the text) (s 37(2)(c) (as so amended));
- 34 (4) any authority, board or undertakers whom the owner is, by a notice served under s 37(1)(d) (as amended) (see head (4) in the text), required to treat, for the purposes of s 37 (as amended), as relevant in relation to the pipeline, to enable them efficiently to take in consequence of the event steps for the purpose specified in that notice (s 37(2)(d)).

As to penalties for furnishing false documents or giving false information see s 46 (as amended); and PARA 628 post.

15 See *ibid* s 37(3) (as amended); and PARA 626 post.

UPDATE

617 Notification to authorities of certain pipeline accidents

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(5) SAFETY REQUIREMENTS/618. Notice to prohibit the use or testing of a pipeline without availability of funds.

618. Notice to prohibit the use or testing of a pipeline without availability of funds.

The Secretary of State¹ may at any time by notice served² on the owner³ of a pipeline⁴ prohibit the use or testing of the pipeline (or of any length of the pipeline) unless there are satisfied such requirements as may be specified in the notice⁵, those requirements being for the purpose of ensuring that funds are available to discharge any liability that may arise in respect of damage attributable to the release or escape of anything from the pipeline or length⁶.

If, before the expiration of 12 weeks from⁷ the date on which a notice is served⁸ on any person⁹, he serves a counter-notice on the Secretary of State objecting to the notice, the Secretary of State must afford him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose¹⁰. Before the expiration of 12 weeks from the date on which any such hearing is concluded, the Secretary of State must consider the objection and the report of the person appointed to hear the objector and, by notice served on the objector, must: (1) quash the notice objected to¹¹; or (2) confirm it without modification¹²; or (3) confirm it with such modification as appears to the Secretary of State to meet the objection¹³.

If a pipeline is used or tested in contravention of a prohibition imposed by a notice under these provisions then, unless he shows that he used due diligence to avoid contravention, the owner is guilty of an offence¹⁴.

1 As to the Secretary of State see PARA 555 ante.

2 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

3 For the meaning of 'owner' see PARA 557 note 7 ante.

4 For the meaning of 'pipeline' see PARA 559 ante.

5 Pipe-lines Act 1962 s 26A(1) (s 26A added by the Petroleum Act 1987 s 26).

As to the exclusion of the Pipe-lines Act 1962 s 26A (as added) see PARA 560 et seq ante. As to requirements relating to pipelines for the purposes of health and safety see the Pipelines Safety Regulations 1996, SI 1996/825 (as amended); and PARA 609 et seq ante.

6 Pipe-lines Act 1962 s 26A(2) (as added: see note 5 supra).

7 For the purposes of the Pipe-lines Act 1962, in reckoning any period before or from a given date, that date must be excluded: s 52.

8 *Ie* under *ibid* s 26A(1) (as added) (see the text and notes 1-5 supra): see s 26A(3) (as added: see note 5 supra).

9 As to offences by corporations see *ibid* s 54; and PARA 629 post.

10 *Ibid* s 26A(3) (as added: see note 5 supra). As to general provisions as to hearings see PARA 602 ante.

11 *Ibid* s 26A(4)(a) (as added: see note 5 supra). The quashing of a notice served under s 26A(1) (as added) does not affect the previous operation of the notice and is not taken to prevent the service of a fresh notice: s 26A(5) (as so added).

12 *Ibid* s 26A(4)(b) (as added: see note 5 supra).

- 13 Ibid s 26A(4)(c) (as added: see note 5 supra).
- 14 See ibid s 26A(6), (7) (as added); and PARA 627 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/619. Works executed in contravention of authorisation.

(6) OFFENCES AND PENALTIES

619. Works executed in contravention of authorisation.

If works are executed in contravention of the provisions which control the construction of cross-country pipelines¹, the person executing them is liable on summary conviction to a fine not exceeding level 3 on the standard scale².

1 Ie in contravention of the Pipe-lines Act 1962 s 1(1) (as amended) (see PARA 573 ante): see s 1(1) (as amended: see note 2 infra). For the meaning of 'cross-country pipeline' see PARA 559 ante. As to deemed contravention of s 1(1) (as amended) see s 9(4) (contravention of condition); and PARA 585 ante.

2 Ibid s 1(1) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 370 note 7 ante. As to the power of the Secretary of State to remove works executed in contravention of the Pipe-lines Act 1962 s 1(1) (as amended) see PARA 583 ante. As to offences created under the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, which, subject to certain exceptions, prohibit the carrying out of pipeline works in breach of any conditions imposed to protect the environment see reg 14 (amended by SI 2007/1992); and PARA 567 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/620. Failure to deposit maps of pipelines with local authorities.

620. Failure to deposit maps of pipelines with local authorities.

A person to whom a pipeline construction authorisation¹ is granted who fails to satisfy the obligation² to deposit forthwith with each local authority³, within whose area lies any part of the route to be taken by a proposed pipeline, a copy on the same scale⁴ of so much of the map annexed to the authorisation as shows the part of that route that lies within that area⁵, is guilty of an offence⁶.

1 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

2 Ie the obligation to which he is subject by virtue of *ibid* s 35(1) (as amended) (see PARA 579 ante): see s 35(4) (as amended: see note 6 infra). As to the exclusion of s 35 (as amended) see PARAS 563-564 ante.

3 For the meaning of 'local authority' for these purposes see PARA 579 note 3 ante.

4 Ie a scale of not less than 1 in 10,560: see PARA 579 note 4 ante.

5 See the Pipe-lines Act 1962 s 35(1) (as amended) (see PARA 579 ante): see s 35(4) (as amended: see note 6 infra).

6 *Ibid* s 35(4) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 12(c)). Any person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Pipe-lines Act 1962 s 35(4) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 370 note 7 ante. As to penalties for providing false information and false documents see PARA 628 post.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/621. Failure to notify change of use or abandonment of pipelines.

621. Failure to notify change of use or abandonment of pipelines.

The owner¹ of a pipeline² must give to the Secretary of State³ notice⁴ of any specified event relating to the change of use or abandonment of a pipeline⁵ within two weeks after the happening of the event⁶ and, if the owner fails to comply with these requirements, he is guilty of an offence⁷.

1 For the meaning of 'owner' see PARA 557 note 7 ante.

2 For the meaning of 'pipeline' see PARA 559 ante.

3 As to the Secretary of State see PARA 2 ante.

4 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante. As to penalties for furnishing false documents or giving false information see s 46 (as amended); and PARA 628 post.

5 See *ibid* s 36(1) (as amended); and PARA 580 ante.

6 See *ibid* s 36(1) (as amended); and PARA 580 ante.

7 *Ibid* s 36(1). Any person found guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 36(1) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 370 note 7 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/622. Failure to notify change of ownership of pipeline.

622. Failure to notify change of ownership of pipeline.

Where a change occurs in the ownership of a pipeline¹, the owner² of the pipeline must³ give to the Secretary of State⁴ and to every person who is an owner, lessee or occupier of land in⁵ which any part of the pipeline is situated, a notice⁶ stating the particulars of the change⁷; and any person who fails to satisfy an obligation to which he is subject by virtue of this provision is guilty of an offence⁸.

1 For the meaning of 'pipeline' see PARA 559 ante.

2 For the meaning of 'owner' see PARA 557 note 7 ante.

3 Is subject to certain limitations and requirements: see the Pipe-lines Act 1962 s 38(1); and PARA 581 ante.

4 As to the Secretary of State see PARA 555 ante.

5 For the meaning of 'in' in this context see PARA 562 note 8 ante. As to the meaning of 'land' see PARA 557 note 8 ante. As to references to the length of a pipeline see *ibid* s 66(2); and PARA 559 ante.

6 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante. As to penalties for furnishing false documents or giving false information see s 46 (as amended); and PARA 628 post.

7 See *ibid* s 38(1); and PARA 581 ante.

8 *Ibid* s 38(2). Any person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 38(2) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 370 note 7 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/623. Failure to avoid construction of further pipelines.

623. Failure to avoid construction of further pipelines.

If the owner¹ of a pipeline² fails to comply with a requirement imposed by a notice³ served on him which imposes a condition regarding capacity with reference to that pipeline⁴, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁵. If the failure continues after his conviction, he is guilty of a further offence and liable to a fine not exceeding £25 for each day on which the failure continues⁶.

If the owner of an additional pipeline⁷ fails to comply with a requirement imposed by a notice served on him with reference to that pipeline⁸, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁹. If the failure continues after his conviction, he is guilty of a further offence and liable to a fine not exceeding £25 for each day on which the failure continues¹⁰.

If the owner of a gas pipeline¹¹ or of an upstream petroleum pipeline¹² fails to comply with a requirement imposed by a notice served on him with reference to usage of that pipeline¹³, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁴. If the failure continues after his conviction, he is guilty of a further offence and liable to a fine not exceeding £25 for each day on which the failure continues¹⁵.

1 For the meaning of 'owner' see PARA 557 note 7 ante.

2 For the meaning of 'pipeline' see PARA 559 ante.

3 For the meaning of 'notice' see PARA 555 note 4 ante.

4 I.e. a requirement imposed by a notice served on him under the Pipe-lines Act 1962 s 9 (as amended) (see PARA 585 ante): see s 9(5) (as amended: see note 5 infra).

5 Ibid s 9(5) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 370 note 7 ante. The Pipe-lines Act 1962 s 9(5) (as amended) applies only to pipelines constructed pursuant to a pipeline construction authorisation which are neither upstream petroleum pipelines nor gas pipelines; and references to 'pipeline' and 'line' are construed accordingly: s 9(1A) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(1), Sch 1 para 1(1); the Pipe-lines Act 1962 s 9(1A) amended by the Energy Act 2004 s 151(1)). As to certain gas pipelines see further PARA 588 ante; and as to upstream petroleum pipelines see further PARA 589 ante.

6 Pipe-lines Act 1962 s 9(5) (as amended: see note 5 supra).

7 For the meaning of 'additional pipeline' see PARA 586 note 2 ante.

8 I.e. a requirement imposed by a notice served on him under the Pipe-lines Act 1962 s 9A(2) (as added) (see PARA 586 ante): see s 9A(5) (as added: see note 9 infra).

9 Ibid s 9A(5) (s 9A added by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 7). The Pipe-lines Act 1962 s 9A(5) (as added) applies only to additional pipelines which are not an upstream petroleum pipeline, a gas pipeline or a gas interconnector; and references to 'pipeline' and 'line' are construed accordingly: s 9A(1A) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 2(1); the Pipe-lines Act 1962 s 9A(1A) amended by the Energy Act 2004 s 151(1)). For the meaning of 'gas interconnector' see PARA 586 note 9 ante.

10 Pipe-lines Act 1962 s 9A(5) (as added: see note 9 supra).

11 For the meaning of 'gas pipeline' see PARA 588 note 2 ante; and for the meaning of 'owner' for these purposes see PARA 587 note 11 ante.

12 For the meaning of 'upstream petroleum pipeline' see PARA 589 note 1 ante; and for the meaning of 'owner' for these purposes see PARA 589 note 4 ante.

13 In relation to certain gas pipelines the text refers to a requirement imposed by a notice served under *ibid* s 10(4) (see PARA 587 ante): see s 10(6) (as amended: see note 14 *infra*). In relation to an upstream petroleum pipeline, the text refers to a requirement imposed by a notice served under s 10E(9) (as added) (see PARA 589 ante): see s 10F(4) (as added: see note 14 *infra*).

14 *Ibid* s 10(6) (amended by the Criminal Justice Act 1982 ss 38, 46), the Pipe-lines Act 1962 s 10F(4) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 1 para 6).

15 Pipe-lines Act 1962 s 10(6) (as amended: see note 14 *supra*), s 10F(4) (as added: see note 14 *supra*).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/624. Placing of pipeline without harbour authority's consent or in contravention of its conditions.

624. Placing of pipeline without harbour authority's consent or in contravention of its conditions.

A person who acts in contravention of the requirement¹ not to place a length of pipeline² above or beneath the surface of waters over which a harbour authority³ has jurisdiction⁴ is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁵.

1 The text refers to a person who contravenes the Pipe-lines Act 1962 s 39(1) (see PARA 593 ante): see s 39(3) (as amended: see note 5 infra).

2 For the meaning of 'pipeline' see PARA 559 ante. As to the length of a pipeline see *ibid* s 66(2); and PARA 559 ante.

3 For the meaning of 'harbour authority' for these purposes see PARA 593 note 2 ante.

4 *Ie* except with the harbour authority's consent and subject to such, if any, reasonable conditions as it may impose for securing that the length does not constitute an obstruction or danger to navigation: see the Pipe-lines Act 1962 s 39(1); and PARA 593 ante.

5 *Ibid* s 39(3) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 370 note 7 ante.

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/625. Works executed in contravention of condition attached to a compulsory rights order.

625. Works executed in contravention of condition attached to a compulsory rights order.

If any works are executed in contravention of a condition attached to a compulsory rights order¹, the person executing them or, in the event of a failure by a person to comply with a requirement to carry out any works imposed on him by such a condition, that person, is guilty of an offence and liable, on summary conviction, to a fine not exceeding the prescribed sum², or to imprisonment for a term not exceeding three months or to both a fine and imprisonment³; or, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both⁴.

1 Lie under the Pipe-lines Act 1962 s 13 (as amended) (see PARA 598 ante): see s 13(5) (as amended: see note 3 infra). For the meaning of 'compulsory rights order' see PARA 597 ante. As to compulsory rights orders see PARA 597 ante.

2 As to the prescribed sum see PARA 367 note 6 ante.

3 Pipe-lines Act 1962 s 13(5)(a) (amended by the Magistrates' Courts Act 1980 s 32(2)).

4 Pipe-lines Act 1962 s 13(5)(b).

Halsbury's Laws of England/RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES (VOLUME 39(1A) (REISSUE))/4. CROSS-COUNTRY PIPELINES/(6) OFFENCES AND PENALTIES/626. Failure to notify authorities of certain pipeline accidents.

626. Failure to notify authorities of certain pipeline accidents.

In the event of the accidental escape or ignition of anything in any pipeline¹, the owner² must ensure that immediate notice³ of the event is given to the relevant authorities and that such information as they may reasonably require is furnished to them at their request⁴, and any person who fails to satisfy such an obligation⁵ is guilty of an offence⁶.

1 For the meaning of 'pipeline' see PARA 559 ante.

2 For the meaning of 'owner' see PARA 557 note 7 ante.

3 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

4 See the Pipe-lines Act 1962 s 37(1), (2) (as amended); and PARA 617 ante.

5 It is an obligation to which he is subject by virtue of *ibid* s 37(1), (2) (as amended) (see PARA 617 ante): see s 37(3).

6 *Ibid* s 37(3). A person found guilty of an offence under s 37(3) (as amended) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 37(3) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 370 note 7 ante.

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627. Contravention of prohibition on use or testing of pipeline without funds to discharge liability.

If a pipeline¹ is used or tested in contravention of a prohibition imposed by a notice² under the provisions which require sufficient funds to be available to cover any damage caused by the release or escape of anything from the pipeline³, then, unless he shows that he used due diligence to avoid contravention, the owner⁴ is guilty of an offence⁵. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum⁶, or, on conviction on indictment, to a fine⁷.

1 For the meaning of 'pipeline' see PARA 559 ante.

2 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

3 I.e. a prohibition imposed by notice under *ibid* s 26A (as added) (see PARA 618 ante): see s 26A(6) (as added: see note 5 *infra*).

4 For the meaning of 'owner' see PARA 557 note 7 ante.

5 Pipe-lines Act 1962 s 26A(6) (s 26A added by the Petroleum Act 1987 s 26).

6 As to the statutory maximum see PARA 367 note 6 ante.

7 Pipe-lines Act 1962 s 26A(7) (as added: see note 5 *supra*).

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628. Penalties for providing false information and false documents.

A person who:

- 409 (1) sends to the Secretary of State¹ an application under the Pipe-lines Act 1962 for the grant of a pipeline construction authorisation² or for the making of a compulsory purchase order³ or of a compulsory rights order⁴, which he knows to be false⁵ in a material particular, or recklessly⁶ sends to him such an application which is so false⁷;
- 410 (2) in purported compliance with a notice⁸ relating to the abandonment, cesser of use and resumption of use of a pipeline⁹, or with a notice relating to the notification of a change of ownership of a pipeline¹⁰, gives a notice which he knows to be false in a material particular, or recklessly gives a notice which is so false¹¹; or
- 411 (3) in purported compliance with the provisions relating to the deposit of maps with local authorities¹² or the provisions relating to the provision to the appropriate authorities of information pertaining to certain pipeline accidents¹³, sends, deposits or furnishes a document which he knows to be false in a material particular, or gives any information which he knows to be so false, or recklessly sends, deposits or furnishes a document which is so false, or recklessly gives any information which is so false¹⁴,

commits an offence¹⁵.

A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the prescribed sum¹⁶ or to imprisonment for a term not exceeding three months, or to both¹⁷, and, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both¹⁸.

Offences are created also in respect of the intentional or reckless submission of false or misleading information pursuant to the Pipe-line Works (Environmental Impact Assessment) Regulations 2000¹⁹.

1 As to the Secretary of State see PARA 555 ante.

2 For the meaning of 'pipeline construction authorisation' see PARA 573 ante. As to pipeline construction authorisations see the Pipe-lines Act 1962 s 1(1) (as amended); and PARA 573 et seq ante. For the meaning of 'pipeline' see PARA 559 ante. As to the meaning of 'construction' for these purposes see PARA 560 note 1 ante.

3 For the meaning of 'compulsory purchase order' see PARA 595 ante.

4 For the meaning of 'compulsory rights order' see PARA 597 ante.

5 As to mens rea in criminal offences see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 8.

6 As to the meaning of 'recklessness' see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

7 Pipe-lines Act 1962 s 46(a) (substituted by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, art 2, Schedule para 14(a)).

8 For the meaning of 'notice' see PARA 555 note 4 ante. As to the service of documents under the Pipe-lines Act 1962 see PARA 557 ante.

9 *Ie* under *ibid* s 36 (as amended) (see PARA 580 ante): see s 46(b) (as amended: see note 11 *infra*).

10 *Ie* under *ibid* s 38 (as amended) (see PARA 581 ante): see s 46(b) (as amended: see note 11 *infra*).

11 *Ibid* s 46(b) (amended by the Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974, SI 1974/1986, reg 2(a), Sch 1).

12 *Ie* in compliance with the Pipe-lines Act 1962 s 35(1) (as amended) (see PARA 579 ante): see s 46(c) (as amended: see note 14 *infra*).

13 *Ie* in compliance with *ibid* s 37(2) (as amended) (see PARA 617 ante): see s 46(c) (as amended: see note 14 *infra*).

14 *Ibid* s 46(c) (amended by the Deregulation (Pipe-lines) Order 1999, SI 1999/742, Schedule para 14(b)).

15 Pipe-lines Act 1962 s 46.

16 As to the prescribed sum see PARA 367 note 6 ante.

17 Pipe-lines Act 1962 s 46(i) (amended by the Magistrates' Courts Act 1980 s 32(2)).

18 Pipe-lines Act 1962 s 46(ii).

19 See the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 14 (amended by SI 2007/1992); and PARA 567 ante.

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629. Liability for offences by corporations.

Where a body corporate is guilty of an offence¹ under any of the provisions of the Pipe-lines Act 1962, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director², manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished accordingly³.

1 As to the criminal liability of bodies corporate generally see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1280.

2 For these purposes, 'director', in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate: Pipe-lines Act 1962 s 54(2).

3 Ibid s 54(1). As to penalties for providing false information and false documents see PARA 628 ante.

UPDATE

629 Liability for offences by corporations

TEXT AND NOTE 3--Pipe-lines Act 1962 s 54(1) amended: Energy Act 2008 Sch 5 para 1.

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630. Liability for offences under safety regulations.

In any proceedings for an offence for a contravention of any of the provisions of the Pipelines Safety Regulations 1996¹ it is a defence for the person charged to prove that the commission of the offence was due to the act or default of another person not being one of his employees (the 'other person'), and that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence². The person charged is not, without permission of the court, entitled to rely on the above defence unless, within a period ending seven clear days before the hearing to determine mode of trial, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession³.

Subject to any of the provisions imposed by the European Community in respect of the encouragement of improvements in the safety and health of workers at work, the Health and Safety Executive⁴ may, by a certificate in writing, exempt any person, pipeline or class of persons or pipelines from any requirement or prohibition imposed by the Pipelines Safety Regulations 1996⁵ and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time⁶. However, the Executive must not grant any such exemption unless, having regard to the circumstances of the case and, in particular, to the conditions, if any, which it proposes to attach to the exemption, and any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it⁷.

1 Ie the Pipelines Safety Regulations 1996, SI 1996/825 (as amended), which are made under the Health and Safety at Work etc Act 1974 and are enforceable under that Act: see PARA 610 ante.

2 Pipelines Safety Regulations 1996, SI 1996/825, reg 28(1).

3 Ibid reg 28(2). For the purpose of enabling the other person to be charged with and convicted of the offence by virtue of the Health and Safety at Work etc Act 1974 s 36 (offences due to fault of other person) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 859), a person who establishes a defence under the Pipelines Safety Regulations 1996, SI 1996/825, reg 28 is nevertheless treated for the purposes of the Health and Safety at Work etc Act 1974 s 36 as having committed the offence: Pipelines Safety Regulations 1996, SI 1996/825, reg 28(3).

4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

5 See note 1 supra.

6 Pipelines Safety Regulations 1996, SI 1996/825, reg 29(1).

7 Ibid reg 29(2).